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1 is very difficult thing to do, and that
2 is why we're asking the question. It is
3 not to put you on trial or anything else.
4 We just have to try to find out if that
5 is the case. You tell me. It is up to
6 you. You are not going to disappoint
7 anybody here or anything else and we're
8 not going to think anything one way or
9 the other. All we're going to say is you
10 have got courage and you have got
11 character.

12 A. The only thing I can tell you, I can try to be
13 fair. I'll try to listen to the stuff
14 and I can be fair. You heard the way I
15 believe, and that is the way I believe.
16 I would try to be fair and that is the
17 only thing I can tell you. I have never
18 done any of this before. It is all new
19 to me.

20 Q. When you say you would be fair, what you are
21 telling me is that you can state
22 unequivocally that you can set those

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1 opinions aside and follow just what the
2 Judge instructs you?

3 A. I'll try. Somebody said, I tried, but it
4 still comes up in there. You can try.
5 Who can say that they can? You said it
6 yourself, it is going to creep back in
7 there. Didn't you say that?

8 Q. Yes.

9 A. You want me to say, yes, I can, but yet you
10 are telling me, no, other people can't,
11 but I can. I can't say that. I don't
12 know what you want me to say.

13 Q. It is not what I want you to say. All I'm
14 saying is that you have to realize that
15 it will creep back in. It may
16 potentially, because you can't get rid of
17 those thoughts, and all I'm trying to say
18 to you is that we need a commitment from
19 you to say that, "Yes, I can do this,"
20 whatever, realize what the situation is.
21 That is what we're really looking for.

22 A. I told you I would try to do the best I can.

1 Q. Don't get mad at me. I understand, we're
2 going around in circles. One other thing
3 about the sentencing. We have talked
4 about potential sentences and you read
5 them in the orientation instructions, and
6 one of the options are capital
7 punishment. The other options are three
8 life sentences. And there's a belief out
9 there a lot of times that people come in
10 with the idea that they hear somebody got
11 a life sentence and then they turn around
12 and get out in five or six years or
13 something. Well, when he gives you the
14 instructions, and he tells you what the
15 penalties are, life without parole means
16 life without parole. Forget the outside.
17 If he gives you that instruction, that is
18 what it means. He's 30 years old and you
19 give him life without parole, is he's
20 there. If he dies at 60, he's been there
21 30 years. At the same time, the life
22 with parole eligibility at 25 means

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1 parole eligibility only at 25 years,
2 after serving full 25 years, or the 30,
3 serving 30 full years, with parole
4 eligibility. Doesn't mean he gets it,
5 but that is what it means. It means what
6 it says. A lot of times we have people
7 that think in the back of their mind, he
8 said life, but I heard, and the outside
9 influences are coming in, and we can't do
10 that because we won't be operating with
11 the same rules.

12 MR. LEWIS: Thank you.

13 MR. WATKINS: We're satisfied.

14 MR. LEWIS: We're satisfied. No
15 objection.

16 THE COURT: I would ask you to call
17 that number given to you after 4:30 each evening
18 until you are requested to come back in. You will
19 be part of the pool from which we'll seat a Jury.

20 (Juror number 53 excused from the Courtroom.)

21 (Juror number 56, Carol Swanson entered the
22 Courtroom.)

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1 selected. If you will please call that number each
2 evening until you are notified to return. Thank
3 you very much.

4 (Juror number 69 excused from the Courtroom.)

5 (Juror number 70, Carol Tigert entered the Courtroom.)

6 THE COURT: Good morning. You have
7 read the material that was given to you?

8 MS. TIGERT: Yes, Sir.

9 THE COURT: We're here to select a
10 Jury for the case brought by the State against
11 Mr. Nathaniel Jackson, wherein he's charged with
12 two counts of aggravated murder with
13 specifications. And in order to have a proper
14 Jury, it is necessary to have 12 people who are
15 able to consider if the Jury makes a finding of
16 guilty. Now the State has the burden of going
17 forward. The Defendant doesn't have to do
18 anything.

19 The State has to prove each and every
20 element of these crimes to the unanimous
21 satisfaction of all 12 members of the Jury, by the
22 burden of proof known as beyond a reasonable doubt.

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1 If they fail to do that, of course, this Jury would
2 properly return a verdict of not guilty. If the
3 State, however, does maintain that burden of proof
4 and the Jury returns a finding of guilty, then the
5 matter will go to a second phase. And during that
6 second part of the trial, the State would be called
7 upon to present what is known as aggravating
8 circumstances. Those are reasons why the Jury
9 should consider imposing the death penalty.

10 The Defense would present mitigating
11 factors. Those are things that would persuade the
12 Jury that in this particular case, the death
13 penalty would not be an appropriate remedy. The
14 point is, it takes 12 people that are at least
15 willing to follow the law and to be able to
16 consider the question of the death penalty. Some
17 people could never sit on such a Jury, and there
18 are others who would be very comfortable, because
19 they think a person unlawfully takes the life of
20 another, then they should give up their life. But
21 that isn't the law of Ohio. If you have either
22 extreme opinion and you are on this Jury, you could

1 not be fair to one side or the other and both sides
2 are entitled to a fair and impartial Jury.

3 So, let me put this question to you. Do
4 you hold any reason or belief that would make it
5 difficult or impossible for you to sit and to
6 follow the law in this case?

7 MS. TIGERT: Well, to be honest with
8 you, I was even out there reading. I kept reading
9 it and I was the last one done and thank God, I
10 wasn't the first one to come in, because I still
11 wasn't done reading it. I have a hard time with
12 saying an eye for an eye or tooth for a tooth,
13 because I am a forgiving type person. That would
14 be like pulling the trigger on somebody, and
15 myself, I cannot kill anybody unless the Lord put
16 it in me to do it. I have that conviction because
17 I am always hoping that the Lord will get ahold of
18 their heart before they die and those years in
19 prison that they get rehabilitated. I pray for
20 people.

21 THE COURT: Do you not see that that
22 is the reason our legislature has drawn the law as

1 they have? The law of Ohio is not an eye for an
2 eye. The law of Ohio says in effect, we're going
3 to make a two stage trial here. First is
4 determined the question of innocence or guilt.
5 Guilty or not guilty. Once that is done, if it is
6 the type of case, and it is only certain types of
7 cases where the death penalty ever comes up. And
8 one of the possibilities is a person is killed
9 unlawfully, then the commission of an aggravated
10 burglary or robbery or -- only then does the
11 question even come up and then our legislature
12 said, well, before that final decision is made,
13 both sides have an opportunity to present other
14 factors to the Jury, so that they can look at this
15 individual fact situation and determine is the
16 death penalty appropriate here. That is the reason
17 that both sides have an opportunity to present
18 facts to the Jury, to make that determination.

19 So, there's no cut and dried thing that
20 follows anywhere. It is up to the Jury to take the
21 information, to analyze it, and to see what is the
22 right thing to do. The just thing. You understand

1 that?

2 MS. TIGERT: Yes.

3 THE COURT: So with that in mind,
4 are you telling me that you could not sit and make
5 that determination?

6 MS. TIGERT: It would be a very
7 tough thing, because I'm just that type of person
8 that if someone shoots me, I wouldn't defend
9 myself. I would say, "It is in the Lord's hands."
10 I'm not a person, whether it is right or wrong, it
11 is how I feel.

12 THE COURT: Fair enough. The other
13 question that we put to you is about whether you
14 have read a lot about this case, or something that
15 you could not set aside, because the case has to be
16 decided on the evidence presented to the Jury here.
17 Do you have any prior exposure to the facts?

18 MS. TIGERT: The first I heard about
19 it was when we first came last week.

20 THE COURT: You don't remember
21 anything before then?

22 A. No.

1 EXAMINATION BY MR. WATKINS OF MS. TIGERT:

2 Q. Good morning. My name is Dennis Watkins,
3 County Prosecutor, along with Charles
4 Morrow, Assistant Prosecutor. We have
5 the responsibility of representing the
6 State and prosecuting the Defendant,
7 Nathaniel Jackson. I'm sure you are
8 aware of that now?

9 A. Yes.

10 Q. And Mr. Lewis will probably ask you questions,
11 but it could be Mr. Consoldane, the
12 attorneys for the Defendant. And His
13 Honor has covered this important issue
14 with you, and I listened and think I have
15 a feeling of what you are saying. I'm
16 not trying to pry, but I have to know
17 some answers. In order for me to
18 determine whether you can be a fair juror
19 in this case, not that you are not a fair
20 person, but it is this case. This is not
21 a breaking and entering, where somebody
22 questions whether they broke into a

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1 garage. This is the most serious case
2 possible, because the person involved,
3 the Defendant, is eligible for the death
4 penalty possibly, if you would find that
5 we proved beyond a reasonable doubt his
6 guilt at that first part of the trial.
7 You understand that?

8 A. Yes.

9 Q. Now I think you told the Judge that you didn't
10 know anything about this case, and that
11 now that you realize from coming to
12 Court, this is a death penalty case that,
13 and I believe you said, "The Lord put it
14 in me," that you don't feel you could
15 sentence someone to death?

16 A. I don't have that in my heart to take
17 someone's life. I just don't have that.
18 It is in the Lord's hands. If someone is
19 going to kill me, I say, "Kill me." It
20 is in the Lord's hands whether I'm going
21 to die or not.

22 Q. You don't agree with the State, through the

1 Government, of executing people?

2 A. Unless the Lord just came and told me, or put
3 it in my heart, from how I am, my makeup,
4 I just --

5 Q. Do you favor capital punishment as a general
6 idea? Do you favor capital punishment?

7 A. That is the death penalty?

8 Q. Yes.

9 A. Not really, no. Because I think that is
10 taking life. I feel like I am actually
11 pulling the trigger, which I could never
12 pull a trigger on somebody.

13 Q. You said if somebody shot you, you wouldn't
14 even defend yourself?

15 A. No.

16 Q. In serving on a Jury, I think you understand
17 that if the State of Ohio is going
18 forward with the idea if it can, to prove
19 his guilt beyond a reasonable doubt and
20 to seek the death penalty, that if we
21 would have a juror that would never give
22 the death penalty, even though it is

1 provided in the law, you would agree we
2 wouldn't get a fair trial, would we?

3 A. No. I'm just being honest.

4 Q. I appreciate that. That is why I'm asking
5 these questions. You are trying, you are
6 trying to do what the Judge has told to
7 you do, and you took your oath, that is,
8 to answer truthfully whether or not you
9 can serve in this case, and answer the
10 questions, right?

11 A. Right.

12 Q. Now, let's put it another way. We go forward,
13 and in this case, the Defendant is
14 charged with killing a home owner, and
15 there's an aggravated murder with
16 aggravating circumstances, involving
17 aggravated burglary and aggravated
18 robbery. That is this case, and the law
19 says the possibility of death penalty
20 exists in this case. Do you remember any
21 cases where, that you can remember
22 reading about, locally where the death

1 penalty has been imposed?

2 A. I hear about it going on, the different ones
3 in Texas, but I don't know the case.

4 Q. So you don't know of any local case where
5 somebody has been sentenced to death?

6 A. No.

7 Q. Reading it in the newspaper or anything?

8 A. No.

9 Q. Assume that we go forward with our case, and
10 we prove beyond a reasonable doubt the
11 Defendant committed aggravated murder and
12 aggravating circumstances, and the Judge
13 in his outline to you and what he told
14 you, then we come to a point where you
15 have to listen to the Defense, and
16 factors that favor life in prison, right?

17 A. Yes.

18 Q. And you would listen to their evidence,
19 wouldn't you?

20 A. Yes.

21 Q. As you would listen to our evidence?

22 A. Yes.

1 Q. And His Honor has indicated that if you find
2 him guilty of aggravated murder with
3 aggravating circumstances, then you go on
4 and listen to the Defense's evidence in
5 favor of life in prison, and then, at the
6 end you have to fairly consider the
7 evidence and determine, whether or not
8 you are going to sign a piece of paper
9 recommending his death. That is what the
10 Judge is basically telling you, what you
11 possibly would have to do, and are you
12 telling me no matter what the evidence
13 is, no matter how much proof there is
14 that the aggravating circumstances
15 outweigh the mitigating factors, that you
16 would not join 11 other people in signing
17 a verdict, recommending his death?

18 A. Honestly, I have got a conviction in my heart
19 not to take an eye for an eye. To me, it
20 is still doing that. I would still feel
21 like I'm pulling the trigger, even though
22 I read the whole thing twice over. And

1 in my heart for me to do that, I would
2 hope that the person would go in prison
3 for life, and I'm just worried about his
4 soul more.

5 Q. So, you would be leaning towards automatically
6 going for life in prison?

7 A. If it came to that, because to do the death
8 penalty to me, that would tear my heart
9 out, because I wouldn't even save my own
10 self.

11 Q. So, you are saying, for strong moral reasons,
12 you would never sentence him to death?

13 MR. CONSOLDANE: I object. He's
14 leading.

15 MR. WATKINS: That is, of course, a
16 leading question.

17 THE COURT: He has the right to ask
18 her a question.

19 MR. CONSOLDANE: He can ask her.
20 Don't put words in her mouth.

21 THE COURT: Just ask your question.

22 Q. Then you are saying that at the end of the

1 day, you heard all of the evidence, under
2 no circumstances would you sign a verdict
3 recommending his death?

4 A. Not unless the Lord actually told me. I don't
5 have it in my heart to do that.

6 Q. The only way you will do that, you would have
7 to have some epiphany or something coming
8 down from God himself?

9 A. He talks to me. I am close to him.

10 Q. Right now, as you know it, you would never
11 sign a verdict recommending his death?

12 A. No, not unless I told you, if it was told to
13 me by the Lord to do it. I can't pull a
14 trigger on somebody even for my own life.

15 MR. WATKINS: Thank you very much.

16 EXAMINATION BY MR. LEWIS OF MS. TIGERT:

17 Q. Carol, my name is Jim Lewis, and along with
18 Anthony Consoldane, that distinguished
19 gentleman over there, we represent
20 Nathaniel in this case. And, from what
21 you have told Judge Stuard and
22 Mr. Watkins here just a few moments ago,

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1 you said that the Lord -- you talk to the
2 Lord, right?

3 A. Yes.

4 Q. And has the Lord since you were in this
5 circumstance -- don't be nervous, just
6 relax. Nobody is going to hurt you here
7 at all. Since you are in these
8 circumstances, has the Lord told you not
9 to sit on this Jury?

10 A. I have my convictions when it goes against
11 that, what I really feel in my heart, and
12 I'm just being honest.

13 Q. Well, here's the difficult problem is that the
14 Lord is up, all around, whatever. We, as
15 humans are here on earth. We're here in
16 the State of Ohio. Some states don't
17 have the death penalty, some states do
18 have the death penalty. The Lord watches
19 over all, and other jurors come in here,
20 potential jurors come in here, and they
21 are of the mind --

22 MR. WATKINS: I'll object, what the

1 mind of the other jurors are.

2 MR. LEWIS: Potential jurors. I am
3 giving her a hypothetical. Other citizens.

4 THE COURT: I'll allow him a little
5 bit of latitude, like I have with both sides here.

6 MR. WATKINS: I withdraw. I thought
7 the way it was phrased, that is all.

8 THE COURT: Each juror has to decide
9 everything to their own satisfaction, and then
10 there has to be a consensus agreed to among
11 everybody. Go on.

12 Q. Carol, the citizenry, the people out there
13 have a lot of different opinions about
14 the death penalty. There's the law, and
15 the way the law is set up, is that it is
16 not set up as an automatic thing. After
17 reading those orientation instructions,
18 you have to go through a trial, find him
19 guilty, find him guilty beyond a
20 reasonable doubt of the aggravated murder
21 with aggravating circumstances, and then
22 there's a second phase. And the citizens

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1 out there who are potentially brought in
2 here as potential jurors, they have all
3 different kinds of views. Some of which
4 are liken to you. Other ones are on the
5 other side of the spectrum, but the Lord
6 is over all. The Lord is over all. And
7 they come into Court, and they have
8 indicated on occasion where they strongly
9 believe in the death penalty, and they
10 strongly believe in if you take a life,
11 your life should be forfeited. But they
12 have come in and said, "Okay, well, the
13 law, says that I can't do that exactly.
14 Even though my personal opinion says if I
15 find him guilty of aggravated murder and
16 aggravating circumstance," under normal
17 circumstances, under their personal
18 opinion, that is it. They would just
19 liquidate and execute at that point. But
20 the law says you can't do that. The law
21 says you have to have a sentencing
22 hearing where we're allowed to bring out

1 things about an individual in that case.
2 And you have to weigh that. Well, if
3 we're all a part of the citizenry here
4 and the Lord is looking over all, all
5 should participate in some form or manner
6 if they can. And those individuals have
7 indicated to us that they can, yes, even
8 though those are the convictions, they
9 say, "Well, we can set those aside, and
10 we can sit on this case, and we can
11 approach it and follow the law." So, the
12 law is, it is up there. And in this
13 case, what we're asking you to do is to
14 do anything that they said they would do,
15 the same as any potential other juror
16 would say. You know, I believe this, I
17 believe this, I believe so, but I can set
18 that aside. I can come in here and
19 follow the law. The Lord wants everybody
20 to participate, not to rule out anybody,
21 and in order to do that, you have to set
22 aside some opinions, and he lets us

1 function that way. So, the question to
2 you is that even though that is the
3 situation, and even though you may not
4 favor the death penalty, other people
5 favor it very heavily, even for
6 non-murder cases, but in this instance,
7 could you participate? All you have to
8 do is be able to consider the death
9 penalty. And the Lord hasn't come down
10 and told you not to sit on this Jury,
11 would you do that?

12 A. I just know my conviction, and some people
13 have a closer walk with the Lord. It is
14 a makeup of me. It might be different
15 for somebody else. It is just my makeup.
16 I'm very tender hearted. What I feel is
17 what I said, and I can't judge what the
18 Lord is doing in everybody's heart.

19 Q. Well, the Lord is allowing us to function this
20 way. This is what you are in. The Lord
21 has created all this. This is the
22 mechanism. He allows it to go on. So

1 who is to say, is the Lord telling you
2 not to participate in this case?

3 A. I am being honest. I can't even pull a
4 trigger to save myself. I would give it
5 to the Lord's hands. He has the eternal
6 power. If I'm not supposed to die -- I
7 am supposed to die.

8 Q. We're not talking about self-defense?

9 A. I'm saying if I can't save myself, how can I
10 pull the trigger on someone else? I feel
11 like that is what I would be doing.

12 Q. So you would, even though the circumstances of
13 the case may be bad and all of that, you
14 don't feel that you could follow the law?
15 In other words, participate and follow
16 the law as it is written?

17 A. I would feel that I would always want that
18 person not to go to hell, give them time
19 to serve time in jail and repent of their
20 sins, give them time. Because I just
21 hate to see anybody go to hell, and they
22 might be in a stance now that they would

1 go to hell, because they didn't have time
2 to repent. To be in hell is a terrible
3 thing. I want to give everybody the best
4 chance they can not to be there. They
5 may need to have some time to consider
6 what they have done and get it right with
7 the Lord.

8 Q. Who said they are going to get it right?

9 A. Who said they aren't?

10 MR. LEWIS: All right. No further
11 questions.

12 MR. WATKINS: We would object. I
13 think it is clear that she's substantially impaired
14 under Wainwright vs. Wade.

15 MR. CONSOLDANE: I disagree and I
16 object. She said she can follow the instructions.
17 She may have to listen to God, but a lot of people
18 have to listen to their conscience. It is the same
19 theory as to whether you listen to your conscience
20 or whether you listen to God, and we hope everybody
21 would do that on the Jury. I don't think that
22 she's impaired at all.

1 MR. WATKINS: That is not what she
2 answered to the questions.

3 THE COURT: I think that there's a
4 distinction between the two positions. I know that
5 the Defense feels that there's no distinction and I
6 understand why. But, Ma'am, the question that has
7 been put to you repeatedly and I think I understand
8 what you are saying, but just one more time. Could
9 you in good faith sit on this Jury, and if the Jury
10 decided that the Defendant was guilty, and you went
11 into the second phase and the State presented
12 aggravating circumstances that outweighed any
13 mitigating factors, if that was the conclusion the
14 Jury arrived at, you included, could you then
15 recommend the death penalty?

16 MR. LEWIS: That is probable if the
17 Jury, you can't say as a whole, you are talking
18 about her individually is the one.

19 THE COURT: I'm saying to her that
20 it only becomes an individual choice, that isn't
21 the way to put it. Each member of this Jury has to
22 first individually come to that conclusion before

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1 that could be the finding of the Jury. You would
2 be one portion, the other 11 would also have to
3 make that decision before you would have to sign.
4 But if that occurred, all 12, in their mind, felt
5 that the State had proven their case on the
6 aggravating circumstances beyond a reasonable doubt
7 that those circumstances outweighed the mitigating
8 factors, would you be able to participate in
9 recommending the death penalty?

10 MS. TIGERT: In my heart, I don't
11 believe I could. I have already dealt with this
12 with the Lord, and I believe in my mind, won't
13 change because of my convictions.

14 THE COURT: You feel it is the
15 Lord's decision, not yours?

16 MS. TIGERT: Yes.

17 THE COURT: I'm going to excuse this
18 juror and your objection is noted for the record.
19 We thank you very much for your participation.
20 (Juror number 70 excused from the Courtroom.)

21 MR. CONSOLDANE: I have been sitting
22 here waiting to put something on the record and I

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1 you put mitigating factors on one side.
2 They are always saying about weighing and
3 putting the aggravating circumstances on
4 the other and see how the scale balances.
5 You are going to have to do this pretty
6 much in your mind. You can do that?

7 A. Yes.

8 MR. CONSOLDANE: Thank you.

9 MR. CONSOLDANE: Pass for cause.

10 We're satisfied with this juror.

11 MR. WATKINS: We have no objection.

12 THE COURT: You will be in the pool
13 from which this Jury is selected, so if you will
14 call that number each evening after 4:30,
15 eventually, you will be notified when to come in.

16 (Juror number 73 excused from the Courtroom.)

17 (Juror number 74, Grace Melidona entered the
18 Courtroom.)

19 THE COURT: Good morning.

20 Mrs. Melidona, you read the hand-out that was given
21 to you?

22 MS. MELIDONA: Yes.

1 THE COURT: The Defendant in this
2 case, Mr. Nathaniel Jackson, is charged with two
3 counts of aggravated murder with specifications, of
4 aggravated burglary and aggravated robbery. That
5 means that under Ohio law this Jury, depending on
6 what their initial decision is, may be requested to
7 go through a second hearing, when the question of
8 the death penalty may arise. Now, the burden is
9 upon the State to proceed. The Defendant need do
10 nothing during the trial if they care not to. The
11 burden is on the State to show good and sufficient
12 evidence that convinces the Jury beyond a
13 reasonable doubt, and that is all 12 members of the
14 Jury, of the truth of the charges brought. If the
15 State should fail to do that, then this Jury will
16 properly return a verdict of not guilty. If,
17 however, the State does carry its burden of proof,
18 and the Jury would return a finding of guilty, then
19 that second phase of the trial would start, and at
20 the second phase, the State is called upon to
21 present what we call aggravated circumstances.
22 Those are reasons that are presented to the Jury as

1 to why the Jury should consider and possibly impose
2 the death penalty.

3 The Defense presents during that hearing,
4 mitigating factors which are things presented to
5 the Jury to show why in this particular fact
6 situation, the death penalty would not be
7 appropriate. There are some people who could never
8 under any circumstances, sit on such a Jury because
9 of their belief that we should not have the death
10 penalty. On the other side of the spectrum, there
11 are people who believe that if you unlawfully take
12 the life of another human being, you should forfeit
13 yours, an eye for an eye, tooth for a tooth.

14 Well, a person with those extreme
15 positions could not give a fair trial to both
16 sides. One would favor the State, one would favor
17 the Defendant. And both sides are entitled to a
18 fair trial. So the purpose of these questions put
19 to each of you individually, is to find out and it
20 also helps you understand in your own mind, whether
21 you would be qualified to sit on such a Jury. So
22 my question to you is, is there anything in your

1 mind that would make it difficult or impossible for
2 you to sit and to follow the law, and if the course
3 of events takes us there, be in a position to
4 consider the question of the death penalty and if
5 need be, to impose it.

6 MS. MELIDONA: No.

7 THE COURT: You would not be able to
8 do that?

9 MS. MELIDONA: No.

10 THE COURT: I can tell you not to be
11 nervous, but I know that is an easy thing to say,
12 but please, this is something that, we're not
13 trying to put you on the hot seat or anything,
14 something we have to go through, part of the
15 process. You will find that both of these
16 gentlemen that are going to talk to you, will be
17 very nice in their approach. Don't be nervous.

18 EXAMINATION BY MR. WATKINS OF MS. MELIDONA:

19 Q. My name is Dennis Watkins. How are you?

20 A. Fine.

21 Q. I am County Prosecutor, along with Chuck

22 Morrow, Assistant Prosecutor, we have the

1 responsibility of prosecuting the
2 Defendant. I'm sure you are aware of
3 that by now. His Honor has given both
4 sides an opportunity to ask questions.
5 Mr. Lewis and Mr. Consoldane will follow,
6 so we can decide whether you can be a
7 juror in this case. And I'm not sure I
8 understood your answer to the Judge, but
9 did you feel that you could or could not
10 impose the death penalty?

11 A. I think I could.

12 Q. Okay. Now this case involves a charge or
13 charges against the Defendant that go
14 back to December of 2001, where he's
15 accused of taking the life of Robert
16 Fingerhut. And he's charged with
17 aggravated murder and two counts, but
18 there's only one death and two
19 specifications of aggravated burglary,
20 aggravated robbery. And there's also two
21 other third and fourth counts of the
22 indictment of aggravated burglary and

1 aggravated robbery. The bottom line is
2 that these are charges, and the
3 indictment is the vehicle by which we get
4 here at this time under our law. And I'm
5 sure you agree with me that as the Court
6 has pointed out, the Defendant is
7 presumed innocent. And you haven't heard
8 any evidence, and therefore, in order to
9 try this case we need 12 people that
10 would be willing to listen to our
11 evidence, consider the Defense's cross
12 examination, whatever it does, and decide
13 what the truth of the charges are. You
14 understand that?

15 A. Yes, Sir.

16 Q. I'm interested in whether or not you have any
17 personal recollection of this case that
18 may come from a news source or from
19 talking to people?

20 A. Yes, I have. I have read about it.

21 Q. Now, I know that you -- I have your
22 questionnaire. May I call you Grace?

1 A. Yes.

2 Q. I know you are from Niles and you are retired
3 from Delphi?

4 A. Yes.

5 Q. You probably get the Tribune or Vindicator?

6 A. Vindicator.

7 Q. Could you tell me what you recall reading?

8 A. Just about how it was the robbery, and the
9 shooting and murder of the gentleman.

10 Q. And what else, if anything, do you remember
11 about the facts?

12 A. I don't know.

13 Q. You are nervous?

14 A. I just remember reading it.

15 Q. It will be necessary to speak loudly so they
16 can hear. It is fair to state you don't
17 remember very much?

18 A. No. Not in detail. I have read it over and
19 over.

20 Q. Did it have any impact on you where you made a
21 decision in your mind, that the person
22 was guilty or not guilty?

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1 A. I did at the time when I read it, yes.

2 Q. And what did you feel at the time?

3 A. At the time, I thought he was guilty.

4 Q. Now, would you agree with me that the
5 newspaper isn't always right?

6 A. Right.

7 Q. In what it writes?

8 A. Right.

9 Q. And would you agree with me, it wouldn't be
10 fair to decide a person's guilt on a
11 newspaper article?

12 A. That is right.

13 Q. So, would you be able to set that aside?

14 A. I could.

15 Q. And only decide the case on evidence, rather
16 than newspaper?

17 A. Yes, Sir.

18 Q. So, at this point in time, you have no problem
19 agreeing with the idea that the Defendant
20 is presumed innocent?

21 A. Right.

22 Q. And, you would require us to prove his guilt

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1 with evidence that shows that that guilt
2 is proven beyond a reasonable doubt?

3 A. Yes, Sir.

4 Q. And, I assume that if we were able to persuade
5 you with proof beyond a reasonable doubt
6 he's guilty of the charges, you would and
7 could sign a verdict of guilty?

8 A. Yes, Sir.

9 Q. And in the event that we didn't, you could
10 just as equally sign a verdict of not
11 guilty, correct?

12 A. Yes, Sir.

13 Q. You would call it like you see it?

14 A. Yes.

15 Q. Now, His Honor has explained to you, and he
16 also gave you the written instructions
17 that the reason we're talking to you now,
18 is to understand you, regarding the issue
19 of capital punishment. Because you
20 understand that if you were to find the
21 Defendant guilty of the aggravated
22 murder, and at least one of the

1 aggravating factors, aggravating
2 circumstances, excuse me, then you would
3 go onto the stage where you would
4 determine penalty, right?

5 A. Yes.

6 Q. Prior to coming to Court, Grace, did you ever
7 give any thought to what your opinion,
8 whether it is based on personal or
9 religious or moral grounds, what your
10 opinion is regarding the death penalty?

11 A. No. I just feel if someone did something that
12 drastic, they should be severely punished
13 for it.

14 Q. And that would include in some cases, the
15 death penalty?

16 A. Yes, Sir.

17 Q. So you have not been opposed to the death
18 penalty?

19 A. No.

20 Q. And you understand what the Judge told you,
21 that there's no automatic death penalty?

22 A. Yes.

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1 Q. Does that sound fair to you?

2 A. Yes, Sir.

3 Q. So that would mean, assuming we prove beyond a
4 reasonable doubt the Defendant committed
5 aggravated murder and the specifications,
6 you still have to have an open mind, and
7 listen to the mitigating evidence, and
8 you would be able to do that?

9 A. Yes.

10 Q. Now, the mitigating evidence would be
11 presented by the Defense, and you would
12 have to decide whether or not it exists,
13 you understand that? Just like you would
14 decide from being in one of these chairs,
15 whether or not our evidence proved to you
16 that the Defendant was guilty, right?

17 A. Yes.

18 Q. That is, as a juror, you decide the
19 credibility of witnesses. And that would
20 be your job and you would be able to give
21 us two weeks of your time to listen to
22 our witnesses, and any witnesses, if we

1 would get to that mitigating phase, that
2 they would present and judge their
3 credibility?

4 A. I think so.

5 Q. In that process, I think you understand that
6 for example in a death penalty case, and
7 this is not the situation here, it is
8 hypothetical, under the law that the
9 Judge outlined, and I know it is
10 complicated, right, and you need guidance
11 from the Court. That if we were to
12 prosecute somebody that was 18 years of
13 age, the law in Ohio would be they would
14 be eligible, if there was an aggravating
15 circumstance, like this case, but let's
16 just say hypothetical, an 18 year old,
17 and one of the mitigating factors would
18 be the youth of the offender, that is, it
19 would be something -- you have got a
20 death penalty case, you have got a young
21 person, may be charged with killing
22 somebody in a gas station robbery. And

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1 the Judge would tell you, "By the way,
2 Grace," and all of the other jurors a
3 mitigating factor, if you find evidence
4 that the person was 18, would be his
5 young age. His youth. And you would
6 have to give some consideration to that,
7 in considering life in prison. You
8 understand that? Now there was a case or
9 two that I had that a juror would say,
10 "Hey, Watkins, if you got an 18 year old,
11 I would never, ever give the death
12 penalty." You understand? It is
13 hypothetical. Obviously, if a juror
14 would say that they were going to
15 automatically give life in prison,
16 because that's a mitigating factor, then
17 they wouldn't be fair, because the law
18 requires them to consider the aggravating
19 circumstances and the mitigating factors,
20 and not automatically lean one way or the
21 other. You understand that?

22 A. Yes.

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1 Q. You feel you would be such a person that you
2 would not lean one way or the other
3 simply because I present evidence, or
4 simply because the Defense presents
5 evidence?

6 A. I feel I could do that.

7 Q. That is, you would go in there wanting to know
8 what the evidence was, and evaluate the
9 evidence as the Judge will tell you, and
10 in the end, you would be able to compare
11 if you had to, the things, the
12 aggravating circumstances that favor the
13 death penalty against the things that
14 favor life in prison, which would be
15 known as mitigating factors. And you
16 understand there's -- you have life with
17 no parole in the sentence as a possible
18 recommendation, you have life sentence
19 with 30 full years as a recommendation,
20 and you have a life sentence with 25 full
21 years in prison. Those are the three
22 possible sentences of life that you could

1 give. And you also have, as you know,
2 the death penalty. So, in short, you
3 would be called upon to listen to the
4 evidence, and in the appropriate case,
5 decide what four penalties you would
6 recommend, right?

7 A. Yes.

8 Q. And the Judge would say, and this is what he's
9 already mentioned to you, that if the
10 State would prove beyond a reasonable
11 doubt the aggravating circumstances,
12 those things that favor the death
13 penalty, outweigh the factors that you
14 would find that favor life imprisonment,
15 that you would recommend a sentence of
16 death. Now, could you, if it was
17 appropriate, and can you tell the State
18 that if we would prove the necessary
19 requirements of law, would you be willing
20 to sign a verdict recommending the
21 Defendant's death?

22 A. Yes.

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1 Q. And I think you can understand the importance
2 of that. If we would not have each juror
3 be willing to do that, we would start the
4 case with having a juror that would not
5 fairly consider our side, right?

6 A. Yes.

7 Q. But you feel comfortable with yourself, and
8 you know yourself better than anyone that
9 you could do this if you were called
10 upon?

11 A. I think so, yes.

12 Q. Now on the other side of the coin, it is
13 equally important that if we would fail
14 at any point in time to do our job,
15 especially at the end, then it is your
16 duty to recommend life in prison. And
17 you could do that, also?

18 A. Yes.

19 Q. You are going to do what the law and the
20 evidence requires, not what I want, not
21 what the Defense wants, but what you
22 conscientiously believe is necessary,

1 right?

2 A. Yes.

3 MR. WATKINS: Thank you very much.

4 EXAMINATION BY MR. LEWIS OF MS. MELIDONA:

5 Q. Grace, my name is Jim Lewis, along with
6 Attorney Consoldane, we represent
7 Nathaniel in this case. You are so soft
8 spoken. You are like my fiancée'. She's
9 got me convinced, I'm totally deaf. I
10 know I'm going deaf. It is a little hard
11 to hear back there. In any event, from
12 what I gathered though, after reading the
13 instructions, orientation instructions.
14 And talking to Judge Stuard, and also
15 Mr. Watkins here, that you have got a
16 pretty good idea of what the structure of
17 this is. In other words, we have very --
18 like all of the conventional criminal
19 cases, we have the actual trial to
20 determine guilty or not guilty.

21 A. Yes.

22 Q. You have got to say yes. You have got to say

1 the words because Mary Ann has to put
2 that down. That part is everybody knows
3 that part, but because this involves
4 potentially the death penalty, the case
5 goes on where the Jury actually makes a
6 decision in the sentencing phase. And
7 going back for a moment, I might indicate
8 to you that, well -- strike that. The
9 death penalty itself, you indicated, I
10 think I heard you, is that or what is
11 your personal opinion about the death
12 penalty before you read the instructions
13 and all of that?

14 A. I always felt if someone killed someone, their
15 life should be terminated, too, after a
16 finding, of course.

17 Q. So really your idea is basically, it is a
18 matter of retribution if their life is
19 taken, their life should be taken as
20 well?

21 A. Yes.

22 Q. And is that a matter of retribution in that

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1 sense, your belief in that, or is that a
2 religious thing, is it? Because that is
3 an eye for an eye type situation, or is
4 it a matter of deterrents in some form or
5 fashion, what undermines that idea? Can
6 you give me, articulate it for me in any
7 way.

8 A. Just feel it is wrong to take someone's life.
9 Should be punished.

10 Q. It is wrong, no question about that. Some
11 people may say, "Well, as far as we're
12 concerned, life imprisonment takes care
13 of it," or "We don't necessarily want to
14 give the death penalty." But on the
15 other side of the coin, you are saying if
16 somebody's life is taken, then their life
17 should be taken as well, right?

18 A. Yes.

19 Q. Now, that is not what you can apply in this
20 case. And you have to set those opinions
21 or beliefs aside because the structure of
22 this is different, correct?

1 A. Yes.

2 Q. Do you think you will have any problem doing
3 that?

4 A. I don't think so.

5 Q. And can you tell me why?

6 A. What he said, I'm going to listen to whatever
7 is presented, and make my decision that
8 way.

9 Q. But what I'm saying is, I understand that the
10 evidence will be presented. If it is
11 presented in the first phase of the
12 trial, if we get to the second phase, of
13 course, the same thing is present. When
14 the Judge gives you the instructions,
15 those personal beliefs, say for instance,
16 if we have the trial and he's found
17 guilty of aggravated murder and
18 aggravating circumstances, your own
19 personal beliefs at that point in time
20 would say, that is it, right. Isn't that
21 true?

22 A. Yes.

1 Q. Well, that is all I'm trying to bring out, to
2 see your natural beliefs. I mean you
3 have those. We can't take them and
4 extract them from you. We can't take the
5 disk out of the computer. We can't
6 eliminate the file. We can't do that.
7 Your personal beliefs are your personal
8 beliefs. We respect those personal
9 beliefs and we're not going to get rid of
10 those personal beliefs. The whole
11 problem is, you have got to set those
12 aside and you can't let those influence
13 your ability to go ahead and follow the
14 instructions and do what they say. What
15 I'm asking basically is simply, and you
16 are under oath, you have taken an oath
17 and if you are sworn in as a juror here,
18 you take an oath and good conscientious
19 people, you have got to live up to that.
20 If you don't live up to that, then, the
21 whole mechanism won't work, and it is a
22 personal -- I would think from a personal

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1 standpoint that would be pretty bad. If
2 you are going to get in the ball game,
3 you take an oath, you have got to say, "I
4 can do this. I know what my personal
5 beliefs are, but I can truly say that I
6 can set those aside, and I can follow the
7 instructions of law. I'm not going to
8 let that come back in and influence me in
9 making my decision here." If it does,
10 then you may not be able to give any
11 consideration, any of those mitigating
12 factors. Normally, your personal
13 opinion, they don't make any difference
14 to you. That is all I'm trying to say.
15 It really comes into focus if you kind of
16 trade places. If you take the position,
17 just reverse these roles here, and I was
18 going to represent you, and not in a
19 death penalty case, just a traffic case.
20 And a juror came in, or they said -- I
21 was going to represent you in a speeding
22 case and they came in, and I would say,

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1 "Well, the Defendant works at Delphi
2 Packard. Well, they have money, they
3 don't care about people, that is the way
4 it is." So if somebody, if you were
5 sitting there and you were my client, you
6 would go, "Hey, Jim," and I would say,
7 "Wait a minute folks, you have got to set
8 that aside." You see how if you were
9 sitting here, saying, "Gee, they don't
10 even like me, they have already kind
11 of" -- you follow what I'm saying?

12 A. Yes, Sir.

13 Q. Don't be nervous, don't crush your hands. You
14 are going to make them black and blue
15 here. It is all right. I'm not going to
16 bite you or anything else. The thing is,
17 what we're going to do here, I'm just
18 trying to find these things out. I'm not
19 doing this to pry or embarrass you, I'm
20 just trying to find out something in
21 order to make sure we have people that
22 can honestly say that they can set these

1 things aside, because it is really
2 important. The system won't work unless
3 it is done that way. It just doesn't
4 work. So --

5 A. I'm sure I can do that.

6 Q. And in regard to the life sentences, we're
7 talking about the other options besides
8 the death penalty. Those mean actually
9 what they say. In other words, life
10 without parole means life without parole.
11 In other words, if he's convicted and
12 he's given a life sentence without
13 parole, that means he spends all of his
14 life in prison. He will die in prison is
15 basically what it means. There's a lot
16 of people out there that think, you see
17 Dateline or you see 20-20 and they say,
18 "The man got life in prison, but all of a
19 sudden, he's out in eight years." The
20 people go, that is not the case, so that
21 would be an example, too, of people in
22 this case if they went back there, and

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1 one of the jurors said, "Well, it is life
2 without parole." And they interject,
3 "Wait a minute, you can't really mean
4 that, because I have seen people get" --
5 that is interjecting something that
6 doesn't belong there. That is why the
7 system won't work. So, it means what it
8 says, life without parole. At the same
9 time, the life imprisonment at parole
10 eligibility at 25 years, means he's only
11 eligible for parole. It means he has to
12 spend 25 years in prison. It doesn't
13 mean he gets out. It is the same with
14 life imprisonment for 30 years. Can you
15 think of any reason that, what we have
16 been talking about, the issues we have
17 been talking about, or anything we have
18 talked about, why you couldn't sit on the
19 Jury and do the best job you can, live up
20 to your oath and do the best job you can
21 on it?

22 A. There's nothing.

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1 MR. LEWIS: Thank you.

2 MR. WATKINS: We're satisfied.

3 MR. LEWIS: Satisfied.

4 THE COURT: Ma'am, you are in the
5 pool then from which this Jury will be selected.
6 If you will be kind enough to call that number each
7 evening until you are notified to come back. Thank
8 you.

9 (Juror number 74 excused from the Courtroom.)

10 (Juror number 75, Dawn Waggoner entered the
11 Courtroom.)

12 THE COURT: Good morning. You read
13 the hand-out?

14 MS. WAGGONER: Yes.

15 THE COURT: By the way, I think a
16 copy of that hand-out should be marked and entered
17 into the record.

18 MR. LEWIS: That is fine.

19 THE COURT: You understand that this
20 case involves the State of Ohio versus Nathaniel
21 Jackson. Mr. Jackson stands charged with two
22 counts of aggravated murder with specifications of

1 will be a witness.

2 MR. WATKINS: You will give some
3 time to the State?

4 MR. LEWIS: Yes.

5 THE COURT: I think the motion
6 should be referred back in something in writing for
7 the record. Even if you just put what you just
8 said on the thing.

9 (Juror number 79, Dan Schoonover entered the
10 Courtroom.)

11 THE COURT: Good afternoon. You
12 read the hand-out that was given to you?

13 MR. SCHOONOVER: Yes.

14 THE COURT: You are aware that this
15 is a case of State of Ohio versus Nathaniel
16 Jackson?

17 MR. SCHOONOVER: Yes, Sir.

18 THE COURT: Mr. Jackson has been
19 charged with two counts of aggravated murder with
20 specifications attached. Those specifications
21 being aggravated burglary and aggravated robbery.
22 Just because a person unlawfully murders another

1530

1 person in Ohio, does not automatically mean that
2 they qualified for the death penalty. There has to
3 be certain facts that occur, according to the
4 statute. And that statute has numerous things in
5 it. Two of them would be if a person commits a
6 murder while committing an aggravated robbery or an
7 aggravated burglary, that brings the possibility of
8 the death penalty.

9 The State of Ohio is required to prove
10 beyond a reasonable doubt each and every element of
11 these two murder charges and the specifications,
12 before they would be entitled to an aggravated
13 murder conviction. If they fail to do that, then
14 this Jury will return a verdict of not guilty. If
15 the State maintains that burden of proof, then the
16 State will be entitled to a finding of guilty. If
17 that should occur, this case would go into a second
18 hearing, and that same Jury will have to listen to
19 aggravating circumstances, which will be brought
20 forth by the State. And those will be factors that
21 the Jury will be faced with, that would tend to say
22 that a death penalty should be considered in this

1 case.

2 The Defense will offer mitigating factors
3 at that same hearing, and those are things that the
4 Jury would consider and possibly say, well, because
5 of these mitigating factors, the aggravating
6 circumstances do not outweigh them, so they would
7 not give the death penalty but some lesser penalty.

8 So that requires 12 people who are able
9 to sit and listen to all of the evidence, and to
10 possibly entertain that second hearing, in regard
11 to the question of the death penalty. Now some
12 people could not under any circumstances, ever sit
13 on such a Jury because they are opposed to the
14 death penalty. That type of person could not
15 possibly give a fair trial to the State. There are
16 others who firmly believe that if a life is taken,
17 that person's life should be taken. Such a person
18 could not give the Defendant a fair trial. Because
19 even if the State is able to maintain this murder
20 was caused as alleged, that does not necessarily
21 automatically mean that the death penalty will come
22 up. It means that the Jury has to evaluate those

1 aggravating circumstances and mitigating factors,
2 and the Jury has to decide whether a death penalty
3 on the facts of this case would be appropriate or
4 not.

5 So, we need 12 people who have an open
6 mind in that they are able to follow the law, and
7 that may mean, no one knows at this point, may not
8 get to the second phase, but if we do, we have to
9 have 12 people on the Jury, that are able to
10 listen, to give their consideration to imposing the
11 death penalty, and not be swayed one way or the
12 other because of some deep seated feeling they
13 have.

14 So my question to you is do you feel that
15 you would be able to serve on such a Jury?

16 MR. SCHOONOVER: Yes.

17 THE COURT: You could?

18 MR. SCHOONOVER: Yes.

19 THE COURT: The other question is,
20 have you been exposed to so much pre-trial
21 publicity about this case that it would be
22 difficult to set that aside?

1533

1 MR. SCHOONOVER: No. I'm working 12
2 hours.

3 THE COURT: You don't have your mind
4 made up on any facts?

5 MR. SCHOONOVER: No.

6 THE COURT: Thank you.

7 EXAMINATION BY MR. WATKINS OF MR. SCHOONOVER:

8 Q. Good afternoon. How are you?

9 A. Good.

10 Q. I'm Dennis Watkins, we talked once before.

11 All right if I call you Danny?

12 A. Yes.

13 Q. Chuck Morrow is my assistant and we're going
14 to prosecute the case against the
15 Defendant. I'm sure you understand that
16 at this point?

17 A. Yes.

18 Q. And like before, the Court has allowed both
19 parties, both sides, to ask you some
20 questions, so either Mr. Consoldane or
21 Mr. Lewis will follow me. So we both
22 have equal opportunities to get to you

1534

1 and decide whether you could be a juror.
2 Not trying to pry, because we have got to
3 understand a little bit more about
4 yourself, so we can make a decision.
5 Now, I understand that in fact, I have
6 your questionnaire -- and you recall
7 writing on your questionnaire?

8 A. Yes.

9 Q. That you believe in the death penalty, and not
10 abortion in certain cases?

11 A. Yes.

12 Q. And that the purpose was that, so obviously,
13 we get some understanding of what
14 principles you have.

15 A. Right.

16 Q. Now, His Honor has told you that the death
17 penalty is not an automatic thing in
18 Ohio. And that you have possibly two
19 trials; the first part of the case, the
20 State would have to put people in that
21 witness chair and provide evidence. You
22 would be one of 12 jurors, and you would

1535

1 listen to our evidence?

2 A. Right.

3 Q. You would judge the credibility of our
4 witnesses and decide whether or not we
5 proved beyond a reasonable doubt the
6 Defendant committed the aggravated
7 murder, and one or more of the
8 specifications. Right?

9 A. Right.

10 Q. And if the State failed to prove his guilt
11 beyond a reasonable doubt, what would you
12 do?

13 A. Find him not guilty.

14 Q. Exactly. The point is, you indicated to the
15 Judge you don't have any knowledge of the
16 case from publicity?

17 A. Right.

18 Q. You work 12 hours a day, and you are busy with
19 your life?

20 A. Right.

21 Q. That would make you the kind of juror that we
22 would want, somebody that comes into

1536

1 Court, has not taken a side and is going
2 to follow the law. Do you think you
3 could do that?

4 A. Yes.

5 Q. That would mean you would find at this point
6 in time, if you had to decide the case,
7 this guy is not guilty because you have
8 no evidence to prove to you beyond a
9 reasonable doubt, his guilt?

10 A. Right.

11 Q. So, assuming, however, that we could prove his
12 guilt beyond a reasonable doubt, and he
13 committed aggravated murder, and the
14 Judge outlined to you the charges on
15 Tuesday, he's accused of killing a home
16 owner intentionally, and as part of that,
17 there were two specifications in the
18 indictment, aggravated burglary and
19 aggravated robbery. You remember that?

20 A. Yes.

21 Q. We would have to prove he did those things.

22 If we did, and you found him guilty, then

1537

1 you go to that second part of the trial,
2 right?

3 A. Right.

4 Q. Well, you understand that there's no automatic
5 death penalty?

6 A. Right.

7 Q. That you would have to consider things that
8 would favor life imprisonment?

9 A. Right.

10 Q. Do you think you could do that?

11 A. Yes.

12 Q. Now, before you came to Court, and you wrote
13 that you believed in the death penalty, I
14 want to go into your personal feelings.
15 We know what the law is. You have got to
16 set your personal feelings aside, but I
17 would like to know how you felt,
18 personally, about the death penalty
19 before you came to Court.

20 A. I felt that the death penalty, if you kill
21 somebody, you should pay for it.

22 Q. And that would mean --

1 A. Maybe they would think twice before they did
2 it again.

3 Q. So you think that the death penalty is a
4 deterrent?

5 A. Right.

6 Q. That if people commit a serious murder, that
7 that would deter others if we had the
8 death penalty?

9 A. Right.

10 Q. Now, do you believe in an eye for an eye, a
11 tooth for a tooth?

12 A. Kind of, yes.

13 Q. Now, what the Judge said was that we don't do
14 that in the law, right?

15 A. Right.

16 Q. That is, you understand, that there's no
17 automatic death penalty for every time
18 somebody kills in the State of Ohio.
19 They don't get an automatic death
20 penalty. You understand that?

21 A. Right.

22 Q. Could you go along with that?

1 A. Yes.

2 Q. Don't you think that is fair?

3 A. Yes.

4 Q. What I am getting at, when somebody is charged
5 with aggravated murder and they are shown
6 to be guilty of aggravated murder, don't
7 you think it is important that you know a
8 little bit about the Defendant, if
9 there's things such as there's mental
10 problems, there maybe some duress that
11 they were suffering, somebody threatened
12 them? Things that could affect the
13 reason for why they did that?

14 A. Right.

15 Q. You see what I'm saying?

16 A. Yes.

17 Q. So before when you said, yes, if you kill
18 somebody, I think you should get the
19 death penalty, and now the Court is
20 saying the law in Ohio is -- "Wait a
21 minute, the fact that you committed an
22 aggravated murder and are eligible for

1540

1 the death penalty, we don't do that in
2 Ohio." And to be a juror, you have to
3 consider the evidence that would favor
4 life imprisonment. Now, would you be
5 able to do that?

6 A. Yes.

7 Q. No problem?

8 A. No.

9 Q. You see what I am getting at?

10 A. Right.

11 Q. Sort of like when you come into Court with
12 your personal beliefs, we want to know
13 about them and some people can set them
14 aside, some people can't. Sometimes
15 we'll have people that say, "I would
16 never give the death penalty. I am
17 against it for religious reasons." They
18 wouldn't be fair to the State. Because
19 right at the beginning of the case before
20 I even started, they have already made up
21 their mind. No death penalty. I'm going
22 to give life. That juror couldn't serve,

1 right?

2 A. Right.

3 Q. Now, on the other side of the coin would be a
4 juror that would say, "If you show me you
5 killed somebody, I'm going to give the
6 death penalty every single time." This
7 man would not get a fair trial with that
8 kind of juror, right?

9 A. No.

10 Q. Because, he's only looking at the murder and
11 not looking at what the law requires.
12 You look at the murder, then you look at
13 the Defendant, and the things that would
14 favor life imprisonment. You could do
15 that?

16 A. Yes.

17 Q. Now, Danny, what kind of cases if you can
18 think of any locally, where you felt the
19 death penalty was appropriate or any case
20 even nationally that comes to your mind,
21 if you have any?

22 A. None, really.

1 Q. You really don't follow cases where you have
2 got this case, that case? You are busy,
3 you do your job?

4 A. Right.

5 Q. Now, if we prove beyond a reasonable doubt he
6 committed aggravated murder and the
7 circumstances that make one eligible in
8 Ohio, is set up by the legislature, the
9 law says, if you commit certain
10 aggravating circumstances, you are
11 eligible. You can accept the law, right?

12 A. Right.

13 Q. And then you remember, you read the
14 instructions the Judge gave you?

15 A. Yes.

16 Q. Mitigating factors?

17 A. Right.

18 Q. By way of hypothetical, you know earlier, I
19 talked about, if we didn't prove our
20 case, you would find him not guilty?

21 A. Right.

22 Q. In order to prove our case, we have got to put

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1 people in that chair, witnesses under
2 oath, and you would be one of the 12
3 persons seated to hear the case. And you
4 would have to determine the credibility
5 of our witnesses, right?

6 A. Right.

7 Q. Because, if Watkins says, this happened, I
8 might not believe what Watkins says, I
9 want to hear from the evidence, right?

10 A. Right.

11 Q. And so, you are going to listen and you are
12 going to decide from giving two weeks of
13 your time or whatever it takes, full
14 attention to this case, you can do that?

15 A. Yes.

16 Q. Nothing on the outside is going to interfere
17 from you listening to all of the
18 evidence?

19 A. No.

20 Q. And then you are going to decide by judging
21 the credibility of our witnesses, their
22 evidence, whether or not it is true, that

1544

1 the Defendant committed aggravated
2 murder, right?

3 A. Right.

4 Q. Now, assuming we get to that second part, then
5 as you know, the Defense has the
6 opportunity to present mitigating
7 factors. And you would have to listen to
8 their witnesses, right?

9 A. Right.

10 Q. And because they say there's mitigating
11 evidence doesn't mean it is true, does
12 it?

13 A. No.

14 Q. You have to decide just like you would decide
15 our evidence, right?

16 A. Right.

17 Q. You want to treat everybody equally?

18 A. Right.

19 Q. Now, in looking and considering their
20 evidence, some things, the law may
21 require you to at least consider, how
22 much importance it has is up to you, but

1545

1 His Honor for example, could say you must
2 consider something. You remember reading
3 the outline, there's certain things.
4 Now, in this case, the evidence is going
5 to show the Defendant is 30 years old.
6 Hypothetical, nothing to do with this
7 case, if you had an 18 year old accused
8 of aggravated murder, and one of the
9 mitigating factors under the law, is if
10 you are a young person, of youthful age,
11 the Jury must consider that as a factor,
12 that favors life in prison. Do you
13 understand that?

14 A. Yes.

15 Q. That is something that the law says, "Listen,
16 you have got a young 18 year old kid, you
17 should look at his young age as something
18 that would be favorable for life in
19 prison." And if you were in such a case
20 and the Judge told you to consider that,
21 you would consider that?

22 A. Right.

1546

1 Q. Well, you know I had a couple of trials where
2 I had a couple of jurors, and in that
3 kind of case, they would look at me and
4 say, "I would never give the death
5 penalty to an 18 year old." Now, once
6 that juror said that to me, that would
7 tell me I wouldn't get a fair trial,
8 right?

9 A. Right.

10 Q. Because if the law provides that you can
11 execute with that factor, that means you
12 have got to give that consideration,
13 which you would do, but you wouldn't
14 automatically once you hear their
15 evidence, say, "I'm going to give life in
16 prison." You see what I am getting at?

17 A. Yes.

18 Q. Because His Honor has told you that you got
19 four possible penalties here. You got
20 the death penalty. You got life with no
21 parole, no opportunity to get out. You
22 got life imprisonment with 30 full years

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1 before you are considered for parole, and
2 then you have got life imprisonment with
3 25 years. Now, how do you determine what
4 penalty you give? As the Judge
5 indicated, you have to consider those
6 aggravating circumstances, right?

7 A. Right.

8 Q. Things that favor the death penalty, and then
9 you have to consider the mitigating
10 factor or factors you found to be true,
11 right?

12 A. Right.

13 Q. And so, you weigh both. And at the end, after
14 the lawyers argued in final argument, the
15 Judge will tell you, you don't give life
16 because you feel like it, you don't give
17 death because you like the penalty. That
18 is not the way it works. The way it
19 works, you have to weigh the aggravating,
20 against the mitigating. And His Honor
21 indicated to you in his instructions to
22 you, if the State would prove beyond a

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1 reasonable doubt that the aggravating
2 circumstances, the things that favor the
3 death penalty in this case outweigh the
4 mitigating factor or factors that favor
5 life imprisonment, it is your duty to
6 recommend the death penalty. That is a
7 pretty awesome responsibility, isn't it?

8 A. Yes, it is.

9 Q. If we could meet that burden as the Judge
10 outlined, you would be able, and I'm
11 asking this question, could you sign a
12 verdict yourself, recommending his death?

13 A. Yes.

14 Q. You see what I am getting at?

15 A. Yes.

16 Q. You could do that, if we did our job you can
17 do your job?

18 A. Right.

19 Q. Bottom line?

20 A. Right.

21 Q. On the other side of the coin, if we would
22 fail to prove beyond a reasonable doubt

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1 that the death penalty is merited in this
2 case, then it is your duty to recommend
3 life in prison. It is whatever the
4 evidence requires you to do under the
5 law. Not what you like to do, it is what
6 the law requires. And you think you
7 could give us your time and attention to
8 make sure the law works?

9 A. Yes.

10 MR. WATKINS: Thank you very much.

11 EXAMINATION BY MR. LEWIS OF MR. SCHOONOVER:

12 Q. My name is Jim Lewis. And would it be okay if
13 I called you Danny, also?

14 A. Yes.

15 Q. And you don't have to be nervous up there. We
16 have had a lot of people with their hands
17 clenched like that and I think they have
18 bruises. They were letting all of that
19 tension off in their hands. I could I
20 could see them shaking. That is not the
21 kind of experience we're talking about
22 here. The gentleman over there,

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1 Mr. Consoldane, along with myself,
2 represent Nathaniel in this case. From
3 the orientation instructions and from
4 Mr. Watkins and also the Judge, you have
5 got a pretty good flavor of what the
6 structure of this case is about.

7 A. Yes.

8 Q. And you have indicated to Mr. Watkins, that
9 your personal belief, it is not what the
10 law is, but your personal belief is that
11 you believe in the death penalty, and
12 that if somebody's life is taken, that
13 their life should be taken, basically is
14 that the idea?

15 A. Yes.

16 Q. And you indicated, I think to Mr. Watkins,
17 sometimes there's a reason for that
18 opinion or whatever. Everybody has
19 reasons for everything, they may be
20 different. And you indicated it was for
21 deterrents, so that somebody else would
22 not be killed. If we execute this person

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1 then, we're going to be all right here,
2 nobody is going to get killed, and
3 everything is going to be fine, right?

4 A. Right.

5 Q. Is there any other reason you can think of?

6 A. No.

7 Q. Have you given it any thought?

8 A. No, not really.

9 Q. Listen, Danny, when people are put on the hot
10 seat like that, you are all right. Don't
11 be nervous. What we're trying to do
12 here -- let me reverse this a little bit.
13 Let's say that you are driving out in
14 Warren Township, I notice you have a
15 friend who is a Warren Township
16 policeman?

17 A. Yes.

18 Q. You are driving out there, and Officer Bishop
19 has the laser out and by God, he got you
20 speeding. At least he says he's got you
21 speeding. And we we come to Court and
22 we're going to have a Jury trial, just

1 like we're going to have here, and I'm
2 going to represent you. For good or for
3 bad, it is okay, but we're going to go to
4 Court together. And the jurors come in,
5 like yourself, and we're able to ask them
6 questions about things or whatever, and
7 some of the jurors, we ask them a
8 question, they get up there and I say,
9 "Well, do you know any Township police
10 officers? I know officer Bishop. He's a
11 fine officer, do you believe him? I
12 believe him all the time." And you are
13 sitting next to me listening to this, and
14 then we say, "Well, Mr. Juror, you have
15 got to understand now, you have got to
16 set that out of your mind, and put your
17 opinion aside that you know Officer
18 Bishop. You have to set aside your whole
19 relationship with Officer Bishop. You
20 can't let that affect you at all in this
21 case." The juror says, "No problem, I
22 can do that." You are sitting next to

1 me, and you have got a nice husky arm,
2 you are a press operator, you go, "Jim,"
3 would you feel uncomfortable with that
4 when a juror, potential juror would say
5 that? Do you follow what I'm saying?

6 A. Yes, I understand.

7 Q. This is very, very important, because this
8 whole system won't function. A lot of
9 people, some people would get on the Jury
10 just to say, "Well, there's too much
11 criminal activity out there. I'm going
12 to get on there and do my job. I am
13 going to get somebody." We have people
14 like that. But this system will work if
15 everybody just says, "This is how I
16 feel." And we understand that, we
17 respect your opinion. I respect your
18 opinion, he respects your opinion, we all
19 do. Out there, you can think anything
20 you want. But when you come in here, it
21 gets a little tougher. It gets tough.
22 And that is the reason, that is the

1 reason why when you are down there in
2 that Courtroom one, that huge Courtroom,
3 the Judge asks you to stand up, and you
4 raise that right hand -- but anyhow,
5 raise your right hand and that is why we
6 swear to God that we're going to answer
7 questions honestly. And not only that,
8 not only this stage, but the next stage,
9 if you are picked for the Jury and chosen
10 to sit on it, he's going to have you
11 raise your hand to God again. Because,
12 why that is important and why we do that,
13 is that we're asking people, and we know
14 the law, figured it out a long time ago,
15 some smarter cats than I, they knew a
16 long time ago to say, juror is going to
17 come in and they are going to have their
18 own opinions and feelings about things,
19 and we're going to have to have some
20 mechanism here where we're going to ask
21 questions of jurors, how they feel. But
22 we have got to put them under oath. We

1 want honest answers, because we need
2 jurors that even though they have
3 opinions, strong beliefs, they have got
4 to be able to put those aside if it
5 conflicts with what the case is about.
6 Sometimes you have a gambling case, and
7 if the Prosecutor here charges somebody
8 with gambling, and the potential jurors
9 come in and they all say, "I don't see
10 anything wrong with gambling. And not
11 only that, as far as I am concerned,
12 Mr. Prosecutor, you represent the
13 Government that has got the biggest one
14 going in Ohio. It is called the Lotto.
15 It takes everybody's money. It is worse
16 than Las Vegas." He would say, "Judge,
17 this person has a strong opinion." And
18 then you say, "Can you set that aside?"
19 And the juror says, "Yes, I can do that,
20 I have no problem with that." That is
21 pretty tricky, isn't it?

22 A. Yes.

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1 Q. You follow what I'm saying?

2 A. Yes.

3 Q. And I'm not doing this to go after you or
4 anything else. What is important here is
5 you have an opinion already that your
6 personal opinion would be, if somebody
7 took a life, their life has to be given.
8 Now, if you sit on this Jury, that
9 personal opinion conflicts with what we
10 have here, doesn't it, in that second
11 phase? The mitigation phase, the
12 sentencing phase?

13 A. Yes.

14 Q. It is okay. I keep telling everybody that she
15 gets paid by the word. If she really
16 did, she would be super wealthy. The
17 point being, don't get nervous -- what
18 we're asking for here, is that you really
19 do have to set that personal opinion
20 aside, because if you didn't and you went
21 to that second phase, even though we talk
22 about mitigating factors, there's

1 something about the Defendant or
2 whatever -- you see, if you let your
3 personal opinion come in, you wouldn't
4 think much of that stuff, didn't make any
5 difference to you personally anyhow. And
6 that is what makes it difficult to follow
7 those instructions, because you are
8 conflicting your personal opinions with
9 what the law is. That is a tough thing
10 to do. It takes character, it takes a
11 person with a lot of character to do
12 that. I mean, there's all kinds of
13 examples of people that they show their
14 greatest character in the most adverse
15 situations, but that is where we're at
16 here with that. And what I have got to
17 know from you is that you recognize what
18 we're talking about, and if you can give
19 me the most honest answer you can, if you
20 think it is going to influence you in any
21 way, then now is the time to tell us.
22 You would be surprised, it takes more

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1 courage to say, "Yes, maybe I wouldn't be
2 the best juror in this case, because that
3 is the way I do feel, and he's entitled
4 to a fair shot." If I was in the same
5 boat, I would want people to come in here
6 and say, "Yes, I can set those aside,"
7 and if they honestly say that, they have
8 got to do it. They are under oath to do
9 it, and they have sworn to God to do it.
10 That is a heavy thing. You tell me. Do
11 you really believe you can do that? Let
12 me interject one thing. I know I'm doing
13 all of the talking. Let me say this to
14 you also, is that there are no right or
15 wrong answers in this thing. This is not
16 a quiz or a test, even though you were
17 read those instructions. A lot of people
18 think they are going to come in here and
19 have multiple choices. It is not that.
20 There are no right or wrong answers in
21 these things. Nobody thinks badly of
22 anybody that says -- when they say, in

1 fact, we have got a number of examples
2 where people said, "I think it may
3 influence my opinion," and those, we
4 commend them for what they are saying.
5 So a lot of people think, if I get a
6 wrong answer, somebody is going to think
7 I'm a bad person. No way. You follow
8 what I'm saying on that?

9 A. Yes.

10 Q. You have got to tell me, you have got to tell
11 me if you were put in the shoes of the
12 Defendant, I don't care if it is a
13 traffic case or whatever, it applies in
14 every case, you have got to tell me, do
15 you really think you can put those
16 opinions aside and not let them influence
17 your ability to judge that case, if it
18 gets to that penalty phase, that
19 sentencing phase?

20 A. I think I could.

21 Q. And you would be very conscientious of the
22 fact that that opinion has got to go by

1 the boards and/or information they give
2 you in mitigation? You can sit there and
3 say, "Well, it is going to be hard to
4 give it some value," isn't it, because
5 your personal opinion is otherwise.

6 Wouldn't you think?

7 A. I don't know. I think I could do it.

8 Q. We really need a commitment. What I'm trying
9 to say to you, this is so important. I'm
10 not trying to put you on the spot or
11 berate you. This is the question. If I
12 had to sit on the Jury, they would be
13 asking me this stuff and even though I am
14 a lawyer, I got my personal beliefs. And
15 I would answer those questions flat out
16 and upright and say what it is. So, all
17 I'm asking you is, it is really
18 important, because you can have somebody,
19 you can have a family member, somebody in
20 the same boat. That is the whole problem
21 about this, everybody could be in the
22 same boat and people think, "No, that

1 can't happen." B.S., it can't happen.
2 It does a lot. And it is like treat your
3 neighbor the way you want to be treated.
4 That is all this boils down to. They got
5 an eye for an eye, but they also say when
6 it comes to trying somebody -- you tell
7 me, what do you think?

8 A. I think I could put it aside.

9 Q. Very important. Once you take that oath, you
10 are guaranteeing that fellow up there,
11 and saying to God that you are going to
12 do it. Also, we're talking about the
13 life sentences here. Those are options,
14 obviously along with the death penalty.
15 And life imprisonment with no parole
16 means exactly what it says. There's some
17 misconception out there, sometimes you
18 see on 20-20, I know you work a lot of
19 hours, but once in a while from the
20 newspaper or somebody talks to you, Joe
21 Blow, he got sentenced to life, but he
22 was out in six years. The life without

1 parole here means exactly that. This
2 would be another example of these are the
3 Court instructions, and this is what it
4 is saying. Life is without parole. The
5 man dies in prison. He watches the world
6 go by. Everybody else lives and he rots.
7 That is the name of the game there. The
8 life with 30 year parole eligibility
9 means exactly that. He would have to
10 serve 30 full years before he would be
11 eligible for parole. Doesn't mean he
12 gets it. People are eligible and they
13 die in prison also, and the same with the
14 25 year. And, that would be an example
15 of a situation where somebody, if you go
16 back in the Jury room, it happens a lot
17 of times, different things come from the
18 outside, and well, these are the options.
19 Well, I don't know, if I don't think
20 those aggravating circumstances outweigh
21 those mitigating factors beyond a
22 reasonable doubt, that is another thing.

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1 There's a standard, it applies in the
2 trial of the case and it applies in the
3 sentencing phase. Did you ever hear that
4 beyond a reasonable doubt thing?

5 A. Yes.

6 Q. That is the standard we use for proof. And it
7 applies in the trial to find guilt. It
8 applies in the trial to find those
9 specifications or aggravating
10 circumstances. You remember what the
11 aggravating circumstances would be or
12 what they are, the instructions? Can you
13 give me an idea of what they would be?

14 A. Burglary is one of them.

15 Q. And that applies there. We get to the
16 sentencing phase, it is the same
17 standard, beyond a reasonable doubt. It
18 is a high standard. It is not just,
19 well, maybe we'll go to lunch, maybe we
20 won't. It is a high standard. It would
21 apply there, too, in the sentencing
22 phase. You would feel comfortable with

1 that?

2 A. Yes.

3 Q. You think there's any reason why you couldn't
4 sit and do the best job you possibly can?

5 A. No.

6 Q. You can live up to that oath?

7 A. Yes.

8 MR. LEWIS: Thank you very much.

9 MR. WATKINS: We're satisfied.

10 THE COURT: Mr. Lewis?

11 MR. LEWIS: Yes.

12 THE COURT: Dan, you will be in the
13 pool from which this Jury is selected. If you will
14 please call that number each evening until you are
15 notified to be here. Thank you very much for your
16 time.

17 (Juror number 79 excused from the Courtroom.)

18 (Juror number 87, Tammie McCale entered the
19 Courtroom.)

20 THE COURT: Good afternoon. You
21 read the hand-out that was given to you?

22 MS. McCALE: Yes.

1 THE COURT: The purpose of this is
2 to ask you some questions pertaining to two items,
3 and the one is whether or not you have had any
4 pre-trial publicity that would make it difficult
5 for you to sit here and decide this case on the
6 evidence. Have you read much about it?

7 MS. McCALÉ: No.

8 THE COURT: Mr. Jackson, the
9 Defendant here, is charged with two counts of
10 aggravated murder with specifications of aggravated
11 burglary and aggravated robbery. Now the State has
12 the burden of going forward and of proving the
13 elements of those murder charges beyond a
14 reasonable doubt. They have to convince all 12
15 members of the Jury of the truth of the charges.
16 Unless, if they fail to do that, then Mr. Jackson
17 would be entitled to a finding of not guilty. If
18 the State, however, is able to maintain that burden
19 of proof, then they would be entitled to, the State
20 would be entitled to a finding of guilty. If that
21 should occur, then the trial will go to a second
22 phase. And the evidence presented in that second

1 phase would be aggravating circumstances put to the
2 Jury by the State. Those would be factors that
3 would persuade the Jury to consider and perhaps
4 impose the death penalty.

5 The Defense would put forth mitigating
6 factors to the Jury, which would be reasons why the
7 Jury should find that in this particular case, the
8 death penalty is not warranted. Some people could
9 never sit on such a Jury because they are totally
10 opposed to the death penalty. Could never
11 participate. Others are at the opposite extreme,
12 and they just as firmly believe that a person who
13 unlawfully takes the life of another human being
14 should forfeit their life.

15 Well, neither of those could provide a
16 fair trial to one side or the other. The law of
17 Ohio says that there's no automatic death penalty
18 for unlawful killing. It is only when certain
19 other criteria are present as in this case, with
20 the aggravated burglary, aggravated robbery.

21 So, the people on this Jury will have to
22 be somewhere in between the two extremes, are able

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1 to listen to the evidence and the law and follow
2 the law. And the law would say that if the State
3 proved that the aggravating circumstances
4 outweighed the mitigating factors on that second
5 phase, then the Jury would be called upon to
6 consider and if their decision is such to impose
7 the death penalty. If they decided that the State
8 did not carry that burden of proof, then they have
9 other options. Life in prison, and so on. So my
10 question to you is, are you able and willing to sit
11 on such a Jury?

12 MS. McCALE: No.

13 THE COURT: Why do you say that?

14 MS. McCALE: Because I don't believe
15 in the death penalty.

16 THE COURT: That hard and fast?

17 MS. McCALE: It is a religious
18 thing. I just couldn't do it. I just could not do
19 it.

20 THE COURT: You are not alone.
21 There are many people that hold that view as there
22 are many people that hold the opposite view.

1 EXAMINATION BY MR. WATKINS OF MS. McCALÉ:

2 Q. My name is Dennis Watkins, I am County
3 Prosecutor, along with Chuck Morrow,
4 Assistant Prosecutor. We, along with the
5 Defense, have the opportunity to ask
6 questions about the issues the Judge
7 discussed. And, I understand you are a
8 teacher.

9 A. Yes.

10 Q. It seems pretty clear to me that you have
11 answered the questionnaire, you don't
12 believe in the death penalty. And in
13 Ohio, we're a state that has the death
14 penalty. And I'm sure you are aware that
15 there are other states that don't. And
16 if you, perhaps yourself in my shoes, if
17 you were going to try a case and the law
18 is a given thing, in this case there's a
19 death penalty. If I would have a juror
20 that would never consider the death
21 penalty, I obviously couldn't get a fair
22 trial, right?

1 A. Right.

2 Q. And you are being honest. It doesn't mean
3 that you are a bad person, there are
4 people that are excellent citizens that
5 may be good in a gambling case or
6 burglary case, but sometimes they have
7 religious or moral views that they just
8 could not consider something that the law
9 allows; is that fair to state?

10 A. That is absolutely correct.

11 Q. And your opposition to the death penalty, is
12 it religious, is it moral, is it both?
13 How would you describe your position?

14 A. It is absolutely morally religious, both.

15 Q. And this is something that you feel strongly
16 about?

17 A. Yes.

18 Q. That you could never set it aside and you
19 would never, no matter what the evidence,
20 no matter how strong the case would be
21 that we could present to you, you would
22 never ever sign a verdict recommending

1 his death?

2 A. No.

3 MR. WATKINS: Thank you very much.

4 EXAMINATION BY MR. CONSOLDANE OF MS. McCALÉ:

5 Q. My name is Tony Consoldane. Along with Jim
6 Lewis, we're representing Nathaniel
7 Jackson. You know to have the Jury
8 system work, we have to have people from
9 all walks of life. And sometimes we have
10 cases where for example that gambling
11 case, gambling, certain types of gambling
12 are illegal in Ohio. However, the law,
13 the lottery, the State gambling is legal,
14 but if some enterprising people try and
15 run what they used to call the bug, which
16 is the same as the three day number, the
17 daily three number game, that is illegal.
18 Now, there's a lot of people that believe
19 in gambling. They think it is all right.
20 The State does it, why should it be a
21 crime? If they can't set that aside,
22 they can't sit on a Jury. You see what I

1 mean?

2 A. Yes.

3 Q. And the same way, there's people that
4 absolutely don't believe in gambling,
5 even if it is legal, and they can't,
6 unless they would be able to set those
7 ideas aside, those beliefs, just for the
8 purpose of the Jury, they couldn't sit.
9 And matter of fact earlier today, we had
10 a guy that wrote on the bottom of his
11 questionnaire, "I believe in the death
12 penalty." And he was able though, to say
13 that he would listen to the Judge, and
14 follow his instructions. And whatever
15 you believe in your heart, is fine. I
16 mean nobody here wants to change your
17 mind about that. The only thing that
18 we're asking you today, is if you could
19 set it aside and follow the instructions
20 of the Judge as to this case. After the
21 case is over, you can pick those beliefs
22 up at the door and take them with you.

1 Could you set them aside?

2 A. No.

3 Q. For this trial?

4 A. No.

5 Q. You are absolutely sure about that?

6 A. Absolutely.

7 MR. CONSOLDANE: Thank you.

8 MR. WATKINS: I think there's enough
9 evidence that she's impaired in this case because
10 of her honest belief.

11 MR. CONSOLDANE: I think she would
12 make a fine juror.

13 MR. LEWIS: So do I.

14 THE COURT: I do too, except for any
15 other case maybe. You are excused. We thank you
16 for your candor and for your time.

17 MR. LEWIS: Just for the record, I'm
18 going to object.

19 (Juror number 87 excused from the Courtroom.)

20 MR. MORROW: I would like to report
21 that the clothing was delivered yesterday morning
22 and also there's additional clothing that has been

1573

1 delivered as well to the jail for the Defendant.

2 THE COURT: Thank you.

3 MR. LEWIS: With the exception of
4 the shoes.

5 MR. MORROW: With the exception of
6 one pair of red and black shoes.

7 THE COURT: Do those need laundered?

8 MR. MORROW: I know the one pair was
9 the pair when the Defendant was arrested, the
10 second were a pair that were recovered at the time
11 of his arrest.

12 THE COURT: If he's going to wear
13 those, they maybe have to have something done to
14 them.

15 MR. WATKINS: We're giving the pair
16 he was wearing, we believe at the time of the
17 offense, we're keeping. The other pair was with
18 him where he was at when he was arrested, where he
19 was staying, we're returning to him.

20 MR. LEWIS: Whatever we have, I'm
21 sure the Prosecutor will send it out to the
22 laundry.

1574

1 THE COURT: I don't wish to have him
2 come in with crumpled clothes that have been stuck
3 in a bag.

4 MR. WATKINS: The clothing that we
5 have, the one set was in his bag, because he had
6 come home from prison, and then in Donna Roberts
7 trunk --

8 THE COURT: Those were packed.

9 MR. WATKINS: He had packaged those
10 himself.

11 THE COURT: That is fine.

12 (Juror number 91, Jeremy Gless entered the Courtroom.)

13 THE COURT: Mr. Gless, how are you?

14 MR. GLESS: Good.

15 THE COURT: You read that hand-out
16 that was given to you?

17 MR. GLESS: Yes.

18 THE COURT: This case is the State
19 of Ohio versus Nathaniel Jackson. And Mr. Jackson
20 stands charged with two counts of aggravated murder
21 with specifications. Under Ohio law, just because
22 there's an unlawful killing of another human being

1 MR. MORROW: Thank you.

2 EXAMINATION BY MR. CONSOLDANE OF MS. MENTEN:

3 Q. Hi, Mary Ann. This is another Mary Ann. Mary

4 Ann, it is kind of unusual that we're

5 talking about penalty, because at this

6 moment Nathaniel Jackson is presumed

7 innocent. But, we can't wait until after

8 the trial and talk to the jurors about

9 this. And I think you understand we have

10 to have somebody that can look at both

11 sides and decide fairly. And also,

12 jurors usually don't ever get involved in

13 the sentence. Once they make a finding

14 of innocence or guilt, guilty or not

15 guilty, they leave, and it is up to the

16 Judge after that, to take over. This is

17 the only case where the Jury actually

18 gets involved in the penalty. Almost

19 every day somebody walks in this

20 Courthouse and one of the four

21 Courtrooms, and either enters a plea of

22 guilty or is found guilty by a Jury.

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1 Now, whenever they plead guilty to a
2 sentence, it could be maybe a minimum of
3 two years and a maximum of ten years.
4 You don't think it would be fair for the
5 Judge to give everybody the minimum every
6 day?

7 A. No.

8 Q. On the other side, you don't think it would be
9 fair to give him the maximum sentence?

10 A. No.

11 Q. In fact, what the Judge does do, is he sends
12 them to the probation department and they
13 conduct what is called a pre-sentence
14 investigation. It is also termed the
15 PSI, and the probation officers check the
16 record, naturally, but they also look at
17 school records, talk to his friends,
18 family, trying to find out a little bit
19 what makes this person tick, why he might
20 have done some of the things he did. And
21 then they report back to the Judge. It
22 is a written report. He reads it over,

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1 and then he hands out the sentence.

2 Sounds like a pretty good way. That is
3 pretty much what the Jury does in this,
4 is that you already, once you have gone
5 past the point of finding that someone
6 was guilty at such a level to allow the
7 death penalty to be imposed, then we have
8 what is called a mitigation hearing and
9 it is something, similar to that, except
10 it is not a written report. It is just
11 facts that are put into Court, and then
12 you have to decide. There's no scales
13 back in the Jury room, where they got all
14 of this weighing. You are going to have
15 to just look at both sides. You feel you
16 can do that?

17 A. Yes.

18 Q. You could be fair?

19 A. Yes.

20 MR. CONSOLDANE: Thank you. Pass
21 for cause.

22 MR. MORROW: Pass for cause.

1724

1 So, the question is, are you able to sit
2 on such a case?

3 MR. DAVIS: Yes.

4 THE COURT: The other question is,
5 have you had any exposure to pre-trial publicity in
6 this case, that would make it difficult to listen
7 to the evidence? Do you have your mind made up
8 about any of the facts?

9 MR. DAVIS: No.

10 THE COURT: Did you read much about
11 it at the time it happened?

12 MR. DAVIS: Yes, a little, in the
13 paper.

14 THE COURT: You are not unusual
15 there. The question is whether you can decide the
16 truth or non-truth of the State's case based on the
17 evidence in this Courtroom, not something that you
18 read before, because that has nothing to do with
19 this case. You understand?

20 MR. DAVIS: Yes.

21 EXAMINATION BY MR. MORROW OF MR. DAVIS:

22 Q. Mr. Davis, my name is Chuck Morrow. This is

1725

1 Mr. Dennis Watkins, the Trumbull County
2 Prosecutor, and I am one of his
3 assistants. I'm going to have an
4 opportunity to ask you a couple of
5 questions about some of your views, and
6 then either Mr. Lewis or Mr. Consoldane
7 will have an opportunity to ask you some
8 similar questions. And as you are aware,
9 Mr. Watkins and I are prosecuting
10 Nathaniel Jackson for the aggravated
11 murder of Robert Fingerhut. And the
12 potential penalty in this case could
13 conceivably be the death penalty, and I
14 assume you are aware of that. And that
15 is kind of what the focus of our
16 questioning is going to be on about your
17 views on the death penalty. But before
18 we get there, I know you told the Judge
19 that you had read a little bit about this
20 in the paper.

21 A. Yes.

22 Q. What paper would you have read it in, if you

1 remember?

2 A. The Tribune Chronicle.

3 Q. And can you tell me when you would have read
4 this?

5 A. It was last year. It was right after it
6 happened.

7 Q. Do you remember what it was that you read?

8 A. Just about this, this guy getting murdered,
9 and that is about it. I can't remember a
10 lot of details.

11 Q. That is all I'm asking is what details you
12 remember. Other than the fact that a guy
13 got murdered?

14 A. No.

15 Q. Any memory of who was involved with it or
16 where it happened, anything like that?

17 A. I just remember it happened in Howland
18 Township. That was about it.

19 Q. And would you agree with me that the
20 newspapers aren't always exactly correct?

21 A. Right.

22 Q. A lot of times they make mistakes?

1727

1 A. Yes.

2 Q. And you wouldn't want to rely upon the
3 newspaper in making a decision as to
4 whether somebody was guilty or not
5 guilty?

6 A. No.

7 Q. As you sit here today would it be fair to say
8 that you haven't formed any opinions as
9 to the Defendant's guilt or innocence at
10 this point?

11 A. No.

12 Q. Whether it is based upon newspaper or
13 conversation with somebody else, or even
14 the discussion that the Judge had with
15 you last week?

16 A. No.

17 Q. The interesting thing with this trial is that
18 there will be two parts, assuming that
19 the State is able to prove in the first
20 part, that the Defendant's guilty of what
21 he did. And if we prove it beyond a
22 reasonable doubt, we go to the second

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1 part of the trial where it would be up to
2 the jurors to make a recommendation to
3 the Judge, as to what kind of penalty
4 should be imposed. And again, as I told
5 you, one of the penalties is that
6 involving the death penalty. And the
7 reason for this questioning that we're
8 doing here is we wanted to -- both sides
9 are trying to get people that are fair.
10 On one instance there are those people
11 that believe that their personal beliefs
12 are an eye for an eye. You take a life,
13 doesn't matter what it is, you should
14 forfeit your life. You probably heard of
15 those kinds of people. And on the other
16 hand, you have people that say under no
17 circumstances, moral, religious, personal
18 conviction, under no circumstance, could
19 I ever recommend the death penalty for
20 somebody. Would you fall into either one
21 of those two camps?

22 A. Yes. I don't believe in taking somebody's

1 life and sentencing them to death for
2 what they have done.

3 Q. Your personal belief is that you don't believe
4 in the death penalty?

5 A. Yes.

6 Q. Can you tell me what the basis is for that
7 belief?

8 A. I just don't feel it is in my power to do
9 something like that, to sentence someone
10 else to death.

11 Q. Is it a religious belief, moral belief?

12 A. Moral belief.

13 Q. Is it something that you have been brought up
14 with?

15 A. Yes.

16 Q. And is that a belief that you hold very near
17 to your heart?

18 A. Yes.

19 Q. And I know that there have been a number of
20 high profile situations that have
21 happened where there's been murders and
22 where people have been convicted of

1 various crimes, and in some of those
2 situations, the people have been
3 sentenced to the death penalty. Even in
4 those most heinous of offenses, the most
5 vicious kind, you could never make a
6 recommendation for the death penalty?

7 A. No.

8 Q. And again, you can understand, and I
9 appreciate your candor, and we're not
10 here to try to change your beliefs or
11 change your views, your personal beliefs.
12 That is what makes our country what it
13 is, we have our personal beliefs. I
14 guess the question is, is that you
15 understand that in Ohio, along with 35
16 other states, Ohio has the death penalty.
17 Or actually 34 other states. And if for
18 example as you sit here and say, "I could
19 never, ever impose the death penalty,"
20 you can understand how the State would
21 feel, that you may not be a fair juror.
22 Would that be fair to say?

1731

1 A. Yes.

2 Q. And even if the Judge were to instruct you and
3 say that the law would require if the
4 State proves beyond a reasonable doubt
5 the aggravating circumstances outweigh
6 mitigating factors, you would need to
7 impose the death penalty, you would tell
8 the Judge you could not do that?

9 A. Right.

10 Q. You would not follow the Judge's instructions
11 on that point?

12 A. No.

13 Q. And I appreciate your candor. I suppose I
14 need you to say yes or no. That is a
15 deep rooted belief and under no
16 circumstance could you impose the death
17 penalty?

18 A. Right.

19 EXAMINATION BY MR. CONSOLDANE OF MR. DAVIS:

20 Q. Good afternoon, Brian. My name is Tony
21 Consoldane, and along with Jim Lewis,
22 we're representing Nathaniel Jackson.

1732

1 You have been involved in a Jury before?

2 A. Yes.

3 Q. And was it a criminal case or civil case?

4 A. Civil.

5 Q. And you saw how the importance of having the
6 Jury to decide the arguments between two
7 people that are basically in a civil
8 case. This is a little different. And,
9 you understand, that to have a juror, you
10 have to have diversity. You have to have
11 people from all walks of life. We had
12 everybody the same on the Jury, they
13 would all just think one way. We need to
14 have diversity to look at different
15 things that are going on in the Courtroom
16 and look at the evidence. And, there are
17 people that absolutely believe in the
18 biblical interpretation of the death
19 penalty, an eye for an eye, tooth for a
20 tooth. And they have that conviction
21 very strong in their hearts. You take a
22 life, you lose a life. However, it

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1 THE COURT: Overruled. Mr. Davis,
2 we thank you for your time. We thank you for your
3 truthfulness. You are excused from any further
4 responsibility in this matter.

5 (Juror number 112 excused from the Courtroom.)

6 (Juror number 124, Richard Simkins, entered
7 the Courtroom.)

8 THE COURT: Good afternoon. You
9 read that hand-out that was given to everyone?

10 MR. SIMKINS: Yes, I did.

11 THE COURT: This case is one of
12 about two counts of aggravated murder with
13 specifications filed against the Defendant,
14 Mr. Jackson. Under Ohio law, just because a person
15 unlawfully kills another person does not mean that
16 they automatically get the death penalty or are
17 eligible for it. But under certain circumstances,
18 according to law, that becomes a possibility if
19 certain elements are present. Now the elements are
20 presented in the indictments that have been
21 returned against Mr. Jackson. If the State is
22 unable, after the presentation of their case, to

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1 doesn't mean that those people are
2 automatically disqualified from sitting
3 on a Jury. They have to be able to set
4 that aside and follow the instructions
5 that the Judge gives them. Now, in your
6 case, just because you have that belief
7 doesn't automatically disqualify you from
8 sitting on the Jury. The real test is if
9 you say, "I can't set my beliefs aside
10 and follow the instructions of the
11 Judge." Do you believe that you could
12 set that aside and follow the
13 instructions of the Judge?

14 A. No.

15 Q. Not even for the purposes of this trial?

16 A. No.

17 MR. CONSOLDANE: I have no further
18 questions.

19 MR. MORROW: The State would move to
20 excuse this juror for cause because he's
21 substantially impaired.

22 MR. CONSOLDANE: Objection.

1721

1 the neighborhood of 15, give or take, of the 24
2 convictions, involve felonies or theft offenses,
3 which, we would view as crimes that we could
4 impeach the Defendant on. And so, if there's any
5 question in the future, I would request that
6 obviously be brought to the attention of the Court,
7 so we can discuss it. But we have finalized for
8 purposes of discovery, the exactitude that Mr.
9 Lewis wanted in regard to what we intend to use.
10 And so, that would be found in Supplemental 11.
11 (Juror number 112, Brian Davis, entered the
12 Courtroom.)

13 THE COURT: Good afternoon,
14 Mr. Davis. You read the hand-out that was given to
15 you?

16 MR. DAVIS: Yes, Sir.

17 THE COURT: The Defendant here,
18 Mr. Jackson, is charged with two counts of
19 aggravated murder with specifications. It is up to
20 the State to present evidence to this Jury of 12
21 people, and convince them of the truth of every
22 element of the charges. Now, if the State fails to

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1 do that, then the Jury will rightly return a
2 verdict of not guilty. That is the end of the
3 trial. If the State is able to maintain their
4 burden of proof and prove all of the elements
5 beyond a reasonable doubt and convince the Jury of
6 the guilt of Mr. Jackson, then a proper finding
7 will be guilty. If that should occur, then this
8 Jury will be required to sit through a second phase
9 of the trial.

10 And at that time, first of all under the
11 law of Ohio, just because someone unlawfully takes
12 a life of another person, that does not
13 automatically mean the death penalty will be
14 imposed. Do you understand that?

15 MR. DAVIS: Yes.

16 THE COURT: But it also means that
17 under certain circumstances, circumstance, if
18 proven true, that exists in this case, then the
19 State has the right to ask for the Jury's
20 consideration and imposition of the death penalty.

21 At the second phase, the State would
22 present what we call aggravating circumstances.

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1 That is reasons why the Jury should consider and
2 impose the death penalty. At that same hearing,
3 the Defense would present mitigating factors, which
4 are reasons presented to the Jury for their
5 consideration of why the death penalty would not be
6 appropriate in this particular case. So what that
7 means is if we have a juror on this Jury that would
8 never, under any circumstances, impose the death
9 penalty, the State can't get a fair trial. But
10 conversely, if we have somebody that believes an
11 eye for an eye, tooth for a tooth, you kill
12 somebody, you lost your own life. Then the
13 Defendant could not get a fair trial. So we need
14 12 people who may cover a range of attitudes about
15 what they think about the death penalty. Some may
16 be more in favor of it than others, but all of them
17 have to look within themselves and answer the
18 question before you can answer it for these folks.
19 And that is, "I can follow the law, and I am ready,
20 willing and able if called upon, to sit and listen
21 to this case, and if we get to that second phase,
22 I'll be able to do what the law requires of me."

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1 MR. MORROW: Thank you.

2 EXAMINATION BY MR. CONSOLDANE OF MS. DEJOY:

3 Q. Good morning. My name is Tony Consoldane.

4 And I am representing Nathaniel Jackson
5 in this matter. And this is a little
6 unusual for us to be talking about
7 penalties when we haven't even gone
8 through the trial. Because under our
9 judicial code, is that everyone is
10 presumed innocent until such time that
11 he's proven to be guilty.

12 A. Yes, Sir.

13 Q. But, we have to do it now because this is the
14 only chance that we have to talk to you
15 about this. We can't wait until the end.
16 And also, this is very unusual, because
17 the Juries usually don't get involved in
18 penalty. A Jury will sit on a case, make
19 a decision as to either not guilty or
20 guilty, and then it is up to the Judge to
21 impose the penalty. Every day in this
22 Courthouse, there's three other

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1 Courtrooms, somebody will walk in and
2 either plead guilty or found guilty of a
3 crime. And there's a range of penalty
4 from two years to maybe ten years. Do
5 you think it would be fair for the Judge
6 always to give the maximum amount of
7 penalties on every case?

8 A. No, Sir.

9 Q. And you think it would be fair for him to give
10 the minimum amounts on every case?

11 A. No.

12 Q. What happens is that the Judge refers the
13 person to the probation department, and
14 they conduct what is called a
15 pre-sentence investigation. It is
16 commonly referred to as a PSI. And the
17 probation officer checks the record,
18 talks to the person's family, friends,
19 checks his school records, work records,
20 and maybe talks to the Defendant, also,
21 to find out what made him do something
22 like this. And writes that report to the

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1 Judge, and then the Judge reads the
2 report and issues the sentence. Sounds
3 like a pretty fair way to do it, isn't
4 it?

5 A. Yes.

6 Q. That is kind of what you will be doing, if you
7 are on the Jury in this case is that
8 after the trial, the first part of the
9 trial is over and he's found guilty, if
10 we get to that step, then we have the
11 second trial, where we present some
12 evidence as to maybe why the death
13 penalty shouldn't be imposed, and that is
14 when you and your other jurors will make
15 your decision.

16 A. Yes.

17 Q. Do you think you can do that?

18 A. Yes, Sir.

19 Q. And you can be fair?

20 A. Yes, Sir.

21 MR. CONSOLDANE: Thank you.

22 MR. MORROW: The State is satisfied.

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1 MR. CONSOLDANE: Pass for cause.

2 THE COURT: You will be in the pool
3 from which this Jury will be selected. If you will
4 be kind enough to call that number given to you
5 each evening after 4:30 until you are invited to
6 come back. Thank you for your time.

7 (Juror number 130 excused from the Courtroom.)

8 (Juror number 132, James Flask entered the Courtroom.)

9 THE COURT: Mr. Flask, this case is
10 State of Ohio versus Nathaniel Jackson.
11 Mr. Jackson has been charged by the Grand Jury by
12 way of indictment, with two counts of aggravated
13 murder with specifications. Under the law of Ohio,
14 just because a person unlawfully kills another
15 person does not automatically mean that the death
16 penalty is even considered. But this case has
17 elements in it that if proven by the State, would
18 bring the question of the death penalty. If the
19 State fails to maintain the burden of proof beyond
20 a reasonable doubt, and fails to prove each and
21 every element of the crime, then of course, the
22 Jury will return properly a verdict of not guilty.

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1 Wainwright case and those that came after, it was
2 to get people who are willing to follow the law,
3 able to follow the law. And I think that is what
4 we endeavored to do here as much as humanly
5 possible to get people who have an open mind. But
6 people who, if in the last instance are required
7 to, are able to sit and consider the question of
8 death, that is what the law calls for.

9 So, for that reason, or reasons, the
10 motions of the Defendant are overruled.

11 MR. WATKINS: Thank you.

12 MR. CONSOLDANE: I also have -- I
13 make another objection to the array of the Jury
14 picked. We only had one person of color on that
15 Jury and he was excused because he couldn't believe
16 in enforcing the death penalty, and that is far
17 less than what the population is in Trumbull
18 County. I don't think that is respective of what
19 the black population is in Trumbull County, nor is
20 it fair to my client to have all elderly white
21 people judging him.

22 MR. WATKINS: Your Honor, the system

1 of Trumbull County is a system that through the use
2 of an electronic random selection, voters, people
3 will come in order as we have gone through a Jury
4 list, there has been one African-American and I
5 agree with Tony, that the good gentleman that was a
6 pastor, that unequivocally could not consider the
7 death penalty. The black population, I believe, in
8 Trumbull County is six percent, and so, you are not
9 going to get in any selection necessarily, a given
10 number, and as we know, there are still a number of
11 jurors to go, but we have gotten from the bottom
12 part of the panel. I believe we're at 140, out of
13 the 400. So, we're talking about population-wise,
14 very much a fraction of the population that we have
15 considered, and they are from all areas. I noticed
16 that for example in this case, we had three people
17 from Farmdale, which is unusual considering the
18 population so -- and there were a number from
19 Brookfield. That it seemed more than usual, but
20 you can't have an usual, because it is random. It
21 is where your name appears.

22 And therefore, we maintain that the

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1 system here is Constitutional, and that there's
2 nothing unusual. Sometimes I have had cases where
3 we would have a higher number of black individuals
4 that would be qualified, and there's no way of
5 knowing, and therefore, unless the Defense, under
6 the law, can prove that there's some discrimination
7 in the system, I believe this motion should be
8 dismissed.

9 MR. CONSOLDANE: I want to say that
10 six percent out of 140, we should have had eight
11 people instead of one, and I think the
12 discrimination comes from the fact that they use
13 the voter registration, and not the license
14 registration as we suggested earlier on our earlier
15 motions.

16 THE COURT: Again the law provides
17 that a county can choose either to be voter
18 registration rolls or the driver's license. I am
19 only aware of a very few counties that tried the
20 process of using the license, driver's license and
21 that has proved to be almost unworkable and very
22 costly and very inefficient because of the change

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1 participate. The voter registration rolls are
2 updated every two years, you vote every two years.
3 Some people, they might miss an election, it goes
4 four years, the driver's license is four years, and
5 that is what I understand the problem has been,
6 that the counties send out all of these notices and
7 they get a much higher return with no such address
8 or move and no forwarding address, whatever, by
9 using the other method. We have voter, motor
10 registration. Now, there's an attempt to get
11 everyone at least registered. Having that in mind,
12 I think your argument 15 to 20 years ago, would be
13 much more valid than it is today. For that reason,
14 I overrule your motion.

15 MR. WATKINS: I believe we had one
16 other black juror that we excused during that first
17 day on cause. I'm positive we had one other black
18 juror that was excused.

19 THE COURT: My observation is no
20 matter whether they are white, black or green, you
21 put them on a Jury, they take their business
22 seriously.

1 A No.

2 Q Yep. That would be a look that would kill; right?

3 A Exactly.

4 Q Yeah. Well, I suppose in every day life when women
5 ask men for money or men ask women for money, there may be
6 some consternation, but -- you also told Mr. Watkins, except
7 for this one supposed incident, you never saw them fight
8 about anything before; is that correct?

9 A Exactly.

10 Q Okay. And you were there every other day for 14
11 hours from October until, well, of course actually about
12 three months, it's only about three months; right?

13 A Yeah.

14 Q But you never saw 'em argue about anything?

15 A No.

16 Q Okay. All right. Did Donna run the restaurant at
17 that time or was that restaurant gone at that time? Just the
18 Ticket. Wasn't there a restaurant?

19 A It was their restaurant, but they closed it.

20 Q Okay.

21 A Back in '99.

22 Q Back in '99. Okay. All right. You didn't work for
23 Robert at any time at the Warren station or anything, did

1 they actually did --

2 THE COURT: Just a minute. This, I think,
3 has to be distinguished on this basis. The officer doesn't
4 know that of his own personal knowledge. It may or may not
5 be true. The prosecution has the right to establish that,
6 the veracity of that through bringing whoever in that did the
7 test. But for purposes of this cross examination, this
8 officer, in the scope of his employment, takes that as being
9 true. Whether it is or not, his testimony at this point is
10 that he's assuming that's true. Let's go on from there.

11 MR. WATKINS: Fine.

12 Q (By Mr. Watkins) Therefore, Detective Dillon was
13 the person who reported that to you; is that correct?

14 A Yes, it was.

15 Q And now, what did, what did you personally see at
16 that point when you went there?

17 A On the 16th?

18 Q Yes.

19 A I saw item 211A.

20 Q That's 311A?

21 A 311A, which is the registration form filled out with
22 Donna Roberts.

23 I was personally there when 311B was collected,

1 Monroe, but there's probably been about six to eight
2 instances where the prosecutor and Mr. Monroe have, they've
3 elicited hearsay testimony from Mr. Monroe in regard to
4 matters of other people telling him certain things or
5 whatever. The last couple of times we've objected. This is
6 becoming a constant situation where the prosecutor knows the
7 rules, how it's supposed to be done and what he's doing is
8 forcing us to object and that's simply making our side look
9 terrible in front of the jury. It looks like we are
10 obstructionists and we don't want things to come in or
11 whatever and that puts us in a bad light. The prosecutor
12 knows the rules. He can do it by the numbers. It goes back
13 to being in class 101. So that's what we're asking. If he
14 does it again, we're asking for a mistrial. We're asking for
15 a mistrial now and definitely if he does it again.

16 THE COURT: Do you have any response?

17 MR. WATKINS: Yeah. Your Honor, defense
18 counsel knows that if the question is improper he should
19 object. Historically, with all the cases I've tried with
20 defense counsel, he has objected. This witness, the things
21 that, and he should be specific, but the things that have
22 come out are going to be brought out by other witnesses, such
23 as there were four receipts, one was in the item that was

1 provisions?

2 MR. WATKINS: It doesn't matter, Jim. You
3 can argue that. That's exactly what the rule says.

4 MR. MORROW: State Farm, it's --

5 MR. CONSOLDANE: How can you argue?

6 THE COURT: Over lunch, come up with the
7 case that varies my opinion at this time. I think that the
8 phone record comes in. That one case mentioned the -- the
9 predicate here is whether there is sufficient evidence to
10 support a finding in question is what it proposes to be. I
11 don't think that there's any question, even by the defense at
12 this point, that that record is what it purports to be.

13 MR. CONSOLDANE: What about this, though,
14 321A?

15 THE COURT: Well, I'll get to that.

16 MR. CONSOLDANE: Okay.

17 THE COURT: That also comes under 902, the
18 phone record, 902(8). It's accompanied by a certificate
19 authorized by law. It's notarized. The question on the
20 compilation, that's something that I don't think is proper
21 for an exhibit because it's a duplication of a portion of
22 321.

23 MR. LEWIS: Of the authenticated one.

1 belonged to our suspect there.

2 Q And as a result of that information what, if
3 anything, did you do?

4 A I collected a pair of tennis shoes that we believed
5 belonged to Nathaniel Jackson.

6 Q Okay. I'm gonna show you what's been marked as
7 State's Exhibit Number 227 and ask you to take a look at
8 that, please.

9 A Yes.

10 Q Are you able to identify that?

11 A Yes.

12 Q And could you briefly tell the Ladies and Gentlemen
13 of the jury what that is?

14 A That is a hallway off of, I believe it was off the
15 dining room area and there was a pair of tennis shoes there.
16 Those are the ones that I collected at the scene.

17 Q Okay. And that hallway and dining area is located
18 where?

19 A At 791 Wirt Street, Youngstown, Ohio.

20 Q And does that picture accurately represent what you
21 saw on December 21st of 2001?

22 A Yes.

23 Q Okay. I'm gonna hand you what's been marked as

1 officers that are there. And what we
2 found out was that according to police,
3 this individual's wife returned shortly
4 home, before midnight, and that she was
5 startled, because when she pushed the
6 garage door opener, instead of the garage
7 door opening, the garage door instead
8 closed and the light went on. And again,
9 this is according to the police. The
10 wife went into -- she pulled into the
11 garage and found her husband unresponsive
12 in the kitchen by the doorway and
13 subsequently called the police. What I
14 saw was kind of a neat and somewhat tidy
15 home, except for the kitchen, which was a
16 bit messy, but not really unusual. Went
17 in through the front door of the house,
18 to our right hand side was sort of a
19 parlor or sitting area. To the left hand
20 side was a dining room area, and as I
21 turned into the dining room area, there's
22 a large glass table, and as I proceeded,

1 MR. CONSOLDANE: I'm going to
2 object. She's been qualified as an expert in DNA,
3 but not in statistics. I would object to her
4 giving statistical numbers.

5 THE COURT: Isn't that part of what
6 a DNA expert does?

7 MR. CONSOLDANE: She's expert in
8 testing, not in statistics. Can we approach?
9 (In-chamber with counsel and witness, Brenda
10 Gerardi.)

11 THE COURT: We're in-chambers out of
12 the hearing of the Jury. The Defense waives
13 presence of Defendant?

14 MR. CONSOLDANE: Yes.

15 THE COURT: What is your objection?

16 MR. CONSOLDANE: This young lady has
17 been qualified as an expert in DNA. I understand
18 she knows how to run the test, how to perform the
19 test, how to read the test, but she has not been
20 qualified as a professional in the field of
21 statistics, and that is an entirely different
22 presented animal. And to be able to give numbers

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1 like that in front of a Jury is -- it is out of her
2 field and it shouldn't be allowed. It is only
3 someone that is an expert in statistics that can
4 testify as to the numbers.

5 THE COURT: What is your response?

6 MR. WATKINS: You have testified
7 previously, as to your reports?

8 THE WITNESS: Yes.

9 MR. WATKINS: The reports you
10 reported? The report that you are testifying
11 about, is a report that you prepared?

12 THE WITNESS: Yes.

13 MR. WATKINS: And it is a standard
14 report?

15 THE WITNESS: Yes.

16 MR. WATKINS: That you do through
17 your training?

18 THE WITNESS: Yes.

19 MR. WATKINS: As a DNA expert?

20 THE WITNESS: Yes.

21 MR. WATKINS: And as part of your
22 training, and a part of your scientific work, you

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1 are accepted in the practice as far as your
2 testimony here concerning DNA analysis?

3 THE WITNESS: Yes.

4 MR. WATKINS: Thank you.

5 MR. CONSOLDANE: What kind of course
6 in statistics did you take?

7 THE WITNESS: I took a course, it
8 was by Columbus State University, or I'm sorry,
9 Columbus Community College, through BCI allowed me
10 to take that, plus we had a known statistician from
11 California, I believe, Charles Brenner came to us,
12 personally, to give us a statistics course on how
13 to do forensic statistics and he's world-wide
14 known.

15 MR. CONSOLDANE: How long was this
16 course that you took at Columbus Community College?

17 THE WITNESS: It was a day.

18 MR. CONSOLDANE: One day course?

19 THE WITNESS: Yes.

20 MR. CONSOLDANE: And how long was
21 the course that you had with this expert that came
22 in?

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1 THE WITNESS: That was also a day,
2 but that does not cover all of the statistics
3 training that I have had.

4 MR. CONSOLDANE: What other
5 statistics training have you had?

6 THE WITNESS: Through out the whole
7 training of the two years that I have had --
8 throughout the training for two years, every case
9 that we work we have a statistic frequencies that
10 we're doing the math. We have to read articles on
11 how the data basing has been produced through the
12 FBI, and we also have the FBI's manuals on how they
13 have come up. Now I have not committed to memory
14 on how they have come up with their data base and
15 how the frequencies are collected, because those
16 are still ongoing.

17 MR. CONSOLDANE: That is the point
18 I'm making. You really don't know how they come up
19 with them. You just read a manual and apply to
20 them. If you apply it wrongfully, you end up with
21 the wrong statistics.

22 THE WITNESS: FBI data base that

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1 comes through our computer, that is an FBI computer
2 and that cannot be tampered with. We actually log
3 in our report and it generates the numbers for us.
4 The FBI does it.

5 MR. CONSOLDANE: Then you didn't
6 generate this number yourself, it was generated by
7 someone else?

8 THE WITNESS: It is a computer
9 generated formula.

10 MR. CONSOLDANE: That is hearsay if
11 she didn't do it.

12 THE COURT: Here's the way I see the
13 thing.

14 MR. WATKINS: There's case law on
15 this.

16 THE COURT: I know there's case law.
17 The Courts of Ohio have accepted it. I personally
18 have problems with it, because I think the
19 foundation material upon which it is based is not
20 as complete as it could be, but that may not be
21 even a valid argument. The manner in which it is
22 done, you only run certain portions of the total

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1 that could possibly be run, right? You don't run
2 the DNA sequence out --

3 THE WITNESS: No, Sir.

4 THE COURT: That would be
5 economically impossible.

6 THE WITNESS: Right.

7 THE COURT: What the Courts have
8 accepted is that the amounts that they do gets it
9 into the statistics of having a probability in
10 favor of being correct. The argument that this
11 lady or anyone else who does this is relying on
12 someone else's statistics. Every time we get a
13 mortality table in there, we're doing the same
14 thing. You tell the Jury that life expectancy is
15 such and such. We rely on tables that are accepted
16 as being valid in our daily lives all the time. It
17 has been accepted in the Courts of Ohio. I see no
18 reason why this lady is not as qualified as any
19 other DNA expert to testify. Part of her job, part
20 of her training is to utilize those statistics, and
21 to come up with a statistical analysis based on the
22 findings that she's had in this particular case. I

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1 think your argument is better put to the methods
2 used. That O.J. Simpson trial, that one attorney
3 from New York, he tore them apart on the
4 methodology used, but on the basis of your
5 objection, at this point I have to overrule it.

6 MR. CONSOLDANE: I want to note my
7 exception. I think that number one, that she's
8 relying on somebody else's work product which is
9 not subject to cross examination.

10 THE COURT: That's entirely correct.

11 MR. CONSOLDANE: And secondly, that
12 she doesn't have the admitted expertise, just two
13 days and some other work to be able to correctly
14 give what the statistics should be in the case.

15 THE COURT: I doubt if there's a
16 person in the United States that could meet that
17 criteria.

18 MR. CONSOLDANE: Then we shouldn't
19 be allowed to use DNA in Courts anyhow. It is as
20 spurious as polygraph machines.

21 THE COURT: It is a very valid
22 scientific thing, but it would cost a million bucks

1 to do it, so there was absolutely no question about
2 the results, but the probabilities are on what
3 she's doing, the Court said it is enough to rely
4 on.

5 MR. WATKINS: And that is why the
6 Defense can have their own witnesses if you have
7 contest on DNA. Ohio allows to present whatever
8 statistical evidence they have.

9 THE COURT: This guy doesn't happen
10 to be O.J. Simpson.

11 MR. WATKINS: There are indigent
12 experts at times. This Court has been generous in
13 its appointment throughout the years.

14 THE COURT: That is the Court's
15 ruling.

16 (End of in-chamber discussion.)

17 Q. (By Mr. Watkins) Brenda, you indicated that
18 the visor had a mixture consistent with
19 the contributions from Robert Fingerhut
20 and Nathaniel Jackson, is that correct?

21 A. That is correct.

22 Q. And on the visor, what were your conclusions?

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1 to the Howland Police Department?

2 A. Yes, they are.

3 Q. Do you recall whom you gave them to?

4 A. I know one gentleman was a Sergeant. I don't
5 recall his name.

6 Q. But those are the same records that you gave
7 to him?

8 A. Yes, they are.

9 Q. And the individual is Nathaniel E. Jackson?

10 A. Yes.

11 MR. MORROW: Nothing further.

12 CROSS EXAMINATION BY MR. LEWIS:

13 Q. Kathy, my name is Jim Lewis, I represent
14 Nathaniel in this case along with
15 Mr. Consoldane. Can I see the Exhibits
16 there?

17 A. Yes.

18 MR. LEWIS: Thank you very much.

19 THE COURT: You may step down.

20 Thank you.

21 BRIDGET PAUL

22 being duly sworn according to law, on her oath,

1 testified as follows:

2 DIRECT EXAMINATION BY MR. MORROW:

3 Q. Could you please introduce yourself?

4 A. I am Bridget Paul.

5 Q. And Bridget, where do you live?

6 A. Avalon, 203 Avalon.

7 Q. Where is 203 Avalon located?

8 A. In Howland.

9 Q. Where is that in relation to Fonderlac?

10 A. Just a block. It is a street over.

11 Q. And are you employed anyplace outside the
12 home?

13 A. No.

14 Q. And did you become familiar with a woman by
15 the name of Donna Roberts?

16 A. In passing, yes.

17 Q. And in particular, did you become familiar
18 with the kind of car that Donna Roberts
19 drives?

20 A. I could recognize it.

21 Q. If you could, just describe what the car kind
22 of looks like.

1 A. Burgundy and a sports car, and in good
2 condition. Actually I'm not good at
3 brands of cars, but if I saw it, I would
4 know it.

5 Q. I'm going to hand you what has been marked
6 previously as State's Exhibits 246, 247,
7 248 and 249 and ask you to take a look at
8 those, please.

9 A. Okay.

10 Q. Are you able to recognize those?

11 A. Yes.

12 Q. And if you could, tell the ladies and
13 gentlemen what they are.

14 A. The last time you saw the car, this one, it
15 was the back end --

16 Q. Does that appear to be the red burgundy car
17 that Donna Roberts would be driving?

18 A. Yes.

19 Q. And those four pictures show four different
20 angles of the car?

21 A. Yes.

22 Q. And what was it in particular that you

1 remember about that car now?

2 A. The bumper.

3 Q. And the back end?

4 A. Yes. It was very unusual because I was behind
5 it sitting and wanting it to go faster
6 and I realized that it was different. It
7 had the license plate and then you had
8 two orange reflecters on both sides.

9 Q. And the one picture there has the rear of the
10 car with those two orange reflecters?

11 A. Right.

12 Q. Now I am going to take you back to December
13 11, 2001. Do you remember seeing that
14 car that evening?

15 A. Yes.

16 Q. And why do you remember that date in
17 particular?

18 A. I was returning some tapes and I was behind
19 the car.

20 Q. And did you get some information the next day
21 that made you remember that day in
22 particular?

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1 A. A friend called and said there was a homicide
2 in Howland, down the street and I kind
3 made a joke because I knew whose car I
4 was behind. I said I bet it is this
5 person here and it was.

6 Q. And as a result of that, did you then contact
7 the police and provide them with some
8 information?

9 A. Yes.

10 Q. And in particular, tell us when you first
11 remember seeing that car on Tuesday,
12 December 11?

13 A. It was about 9:30, between nine and ten and I
14 saw it on Old 82.

15 Q. And where is that in relation to your house?

16 A. I am a block, I am actually -- my house is in
17 between Old 82 and New 82 and I was
18 taking Old 82, which is about two blocks
19 north of my house.

20 Q. And where were you planning on going?

21 A. To Giant Eagle.

22 Q. What were you going to do at Giant Eagle?

1 A. Return tapes.

2 Q. You started to leave your house with the tapes
3 to go back to Giant Eagle?

4 A. Yes.

5 Q. Where did you first see -- you saw this car on
6 Old 82?

7 A. Yes.

8 Q. And which direction was that car going?

9 A. It was going towards Warren, which is west.

10 Q. And it was on Old 82 as well?

11 A. Yes.

12 Q. And as you head -- why don't you describe a
13 little bit about the area, Old 82, where
14 it is around your house, how many lanes
15 are on Old 82?

16 A. It is two lanes.

17 Q. One in each direction?

18 A. Yes.

19 Q. And as you continue, you said you were heading
20 west towards Warren?

21 A. Yes.

22 Q. And what is the first major crossroad that you

2930

1 would come to?

2 A. 46, it would be Howland Corners.

3 Q. And 46 is --

4 A. The first light you are saying.

5 Q. The first major intersection?

6 A. Okay, Route 46.

7 Q. And does that 46 take you down, if you go
8 south, it takes you towards Eastwood
9 Mall?

10 A. Yes.

11 Q. And that is the back way into the mall?

12 A. Yes.

13 Q. And what is right there on the corner of 46
14 and 82?

15 A. Giant Eagle.

16 Q. It is kind of a plaza?

17 A. A plaza, yes.

18 Q. And are there other stores besides Giant Eagle
19 that is there?

20 A. Yes.

21 Q. And how do you get into the Giant Eagle
22 parking lot? Are there a number of

1 entrances to get into it?

2 A. It would be on your left as you are going down
3 towards Howland, you would make a left.

4 Q. And is Old 82 still two lanes at that point?

5 A. No. As soon as you cross through the light.
6 It goes into four lanes going towards
7 Warren.

8 Q. And you have seen the car that Donna Roberts
9 has driven before, is that correct?

10 A. Yes.

11 Q. And was there anything characteristic about
12 the driver, that the driver of the car
13 would do that caught your attention?

14 A. She would always when she smoked, she would
15 always put her hand out the window in a
16 certain manner and she would kind of
17 flick it like Hollywood style. We would
18 make fun of it whenever we would see it
19 and once I got in the light, I could see
20 the hand and then I realized it was her.

21 Q. So you followed this car from your allotment
22 down to 46?

1 A. Yes.

2 Q. And approximately how far is that?

3 A. I'm not good at miles, maybe a mile.

4 Q. And you are directly behind this red car?

5 A. Yes.

6 Q. And did you have to stop at the light at 46?

7 A. Yes, we stopped. Actually we were just going
8 very slow, I think it just turned and we
9 went through, so I don't think it was a
10 red one, the one before that we stopped,
11 which would be on the Howland-Wilson
12 Road.

13 Q. And that light changed and you proceeded on
14 down to 46?

15 A. Yes.

16 Q. Do you know what the speed limit is out there?

17 A. I think it is 40.

18 Q. Do you know if you were doing the speed limit?

19 A. No.

20 Q. Did that appear odd to you?

21 A. Yes, because no one was on the road but us and
22 I was in a hurry and she was going very

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1 slow and it was agitating me, so that is
2 why I was right on her tail and I
3 couldn't miss her license, because it was
4 right there and it took forever to get
5 down to Howland Corners.

6 Q. And once you got to Howland Corners, what
7 happened then?

8 A. She stayed in the right lane to the next light
9 and then I went off into Giant Eagle, I
10 cut the light there and went into the
11 Plaza on the left.

12 Q. And what happened with her car?

13 A. As I was going up to Giant Eagle, there was
14 like across, I glanced back and I saw her
15 car still sitting there, and I was just
16 wondering what is she doing, because it
17 was taking her forever to get down the
18 road, and then she was pausing awhile and
19 I don't think it was a red light. Then I
20 went over and put my tape in the box and
21 I looked back and it looked like she was
22 moving. As I pulled up, I dropped the

2934

1 tape off, I glanced over, and the car was
2 there and then I looked back again and it
3 wasn't there.

4 Q. Did the length of time that she appeared to be
5 taking appear odd to you?

6 A. It seemed, but now as I think back at how she
7 used to drive, she used to drive slow all
8 the time. I don't know. If no one was
9 on the road, I always go fast and I
10 thought she would be going faster, but
11 she was going pretty slow.

12 Q. And this was approximately what time?

13 A. Between 9:30 and 10:00.

14 MR. MORROW: No further questions.

15 CROSS EXAMINATION BY MR. CONSOLDANE:

16 Q. My name is Tony Consoldane, and I represent
17 Nathaniel and I'm going to ask you a
18 couple of questions. How well do you
19 know Donna Roberts?

20 A. I don't.

21 Q. You have never met her?

22 A. No.

2935

1 Q. Have you ever seen her in the store shopping
2 or at any function?

3 A. I have seen her in passing, but I never
4 stopped to make a conversation with her.

5 Q. I guess the point I'm trying to make, have you
6 ever seen her outside of her automobile?

7 A. Yes.

8 Q. And where would that have been?

9 A. At the store, Giant Eagle, and actually most
10 of the time in the car.

11 Q. Did you ever see her drive any other car
12 besides this one?

13 A. No.

14 Q. And every time she would drive, she would have
15 her hand out with a cigarette in it?

16 A. Pretty much.

17 Q. Even in the Winter when it was cold?

18 A. Actually, that night, it was a nice night and,
19 yes, she had her window down and her hand
20 was out, because I saw her flick the
21 cigarette and I am thinking -- she was
22 that type of person.

2936

1 Q. You left your house on Avalon and you came up
2 to Market Street or Old 82. Was she
3 already there at the stop sign or had she
4 already turned?

5 A. You know, I don't know. I didn't realize it
6 was her until --

7 Q. You got to Howland Wilson?

8 A. Yes.

9 Q. So you don't know when she was coming out of
10 that street?

11 A. I saw a light because the lighting is not good
12 in the allotment there and when I pull
13 out, there was a car, but I can't say if
14 it was her.

15 MR. CONSOLDANE: Thank you.

16 MR. MORROW: Nothing further.

17 THE COURT: Thank you.

18 KATHERINE THOMAS

19 being duly sworn according to law, on her oath,
20 testified as follows:

21 DIRECT EXAMINATION BY MR. MORROW:

22 Q. Could you please tell us your name?

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1 MR. CONSOLDANE: We're here
2 in-chambers, out of the hearing of the Jury, and I
3 am waiving the presence of our client. Yesterday
4 Mr. Lewis attempted to get some information from
5 Paul Monroe on to the record and the State objected
6 saying that they do not allow to attack the
7 credibility of a witness or the character of a
8 witness. And I have never heard of anything of
9 that before. I went home last night and tried to
10 research it. I thought maybe this victims' rights
11 had been able to pass a new law or something, but
12 that is not true. Nothing in there that says you
13 can't attack the character of the victim, and for
14 him to stop him from doing that was wrong. It is
15 another reason to add to the list of the mistrial,
16 the reasons we should have a mistrial in this case.
17 And on top of that is that Mr. Watkins opened the
18 door. He asked one of his own witnesses on direct
19 testimony, what kind of a guy was Robert Fingerhut,
20 and the guy went on to say, "Well, he was always
21 having jokes and he always had something to say."
22 Once he does that and he opens the doors, there's

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1 no reason why we can't talk about his character.
2 And we have indications that there are even some
3 credit card problems that happened, some credit
4 card fraud in his past, and the State has that
5 information, and I think that they should give that
6 to us, give it to Paul Monroe or Jim Teeple, and
7 let us get it in that way.

8 MR. LEWIS: I would like to add,
9 Tony is correct, because the rules in evidence
10 actually indicate the fact is that if we have a
11 self-defense, which we're asserting here, that
12 we're allowed to go into the character of the
13 victim here. The victim, as Mr. Watkins tried to
14 portray in the first part of the case, as a real
15 nice guy, everything above board, whatever, is not
16 true. We have evidence of the fact that he
17 produced and had in his wallet, carrying with him,
18 a badge as a State's Attorney Special Investigator
19 from Florida which is a bogus thing. He was never
20 ever a special investigator for the State office in
21 Florida. He also carries a card and had in his
22 wallet he was carrying, was supposedly, he was a

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1 special agent for the Department of Justice and was
2 supposed to be issued by the U.S. Marshal's office
3 out of Cleveland. Well, I contacted Cleveland and
4 David Harlow is the chief Marshal up there, and
5 before I indicated to him that Mr. Fingerhut was
6 deceased, he was going to have officers come down
7 here and talk to Mr. Fingerhut in regard to that
8 fraudulent card he was carrying, trying to
9 impersonate a special agent of the Department of
10 Justice. And the point being is that Mr. Fingerhut
11 obviously is a violater of the law, and at the same
12 time the Prosecutor opened the door in regard to
13 that, so I think, and it is all relevant in regard
14 to this whole situation as to what means or what
15 steps he would take in order to try to secure his
16 own position in regard to this whole situation
17 involving all of the property in the name of Donna
18 Roberts.

19 This becomes very important because he's
20 the one who has the absolute motive in order to get
21 rid of Mr. Nathaniel Jackson. Nathaniel Jackson is
22 a potential problem, and Donna Roberts could easily

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1 have married him or brought him in the house and
2 there's nothing in the name of Robert Fingerhut,
3 and that gives Mr. Fingerhut every motive in the
4 world to get rid of Mr. Nathaniel Jackson. Because
5 he becomes the problem and if Donna Roberts says,
6 "Leave the house, it is not your car," everything
7 was in her name. So, he had every reason in the
8 world to try and kill or to get rid of Nathaniel
9 Jackson. There's no doubt about it because
10 everything that he enjoyed or whatever you want to
11 call it, belonged to Donna Roberts and he would be
12 out the door. All of this is relevant. It should
13 be brought in. The Jury should know about it, and
14 there isn't anything about you can't attack the
15 character of a victim. That is absolutely
16 incorrect. Especially when you have a self-defense
17 according to the rules of evidence.

18 Now they can come back and say he was a
19 peaceful guy, but they have opened the door
20 already. That is exactly what they have done.
21 They have started off with the idea that he's
22 peaceful, nice guy, and that is not the case.

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1 MR. WATKINS: Your Honor, to start
2 with, the ruling that the Court made concerning the
3 collateral matters such as a badge or what he may
4 have done in Florida relative to a private
5 investigator, those matters clearly are not
6 relevant to this case, and there's nothing in the
7 record that in fact, the record would reflect that
8 the Defendant's version exactly, what happened, it
9 is already in the record. What he was or what
10 identification he had, regarding Florida or what
11 credit cards he had, has nothing to do with this
12 case. His character as to the past is irrelevant.
13 There's no information from the Defendant or
14 anyone, that that information has any bearing on
15 this case. It is simply an effort to put on trial
16 the victim and there's plenty of law, that when you
17 go into character evidence, you have to have a
18 foundation. And this is pure hearsay, what they
19 are talking about. Secondly, the general rule on
20 self-defense and the rules of evidence would
21 clearly indicate that if the Defendant knew acts of
22 violence, obviously that could come in to be

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1 relevant in self-defense. Even acts of violence
2 that were on record, we have no evidence, there's
3 nothing in our file. They have had access to our
4 file regarding violence on the part of this victim.
5 That is irrelevant to this case because they don't
6 have anything regarding acts of violence by the
7 victim. Therefore, the victim's character cannot
8 be an issue, because there's no evidence that deals
9 with the character of the victim as to propensity
10 for violence. There's zero. They have had
11 complete access and the reason they have
12 information about credit cards because they have
13 seen our whole file, and I think the rulings
14 yesterday were completely appropriate, and that
15 this case has to end at an appropriate time and
16 that this case should be dealing with what the
17 evidence is in the case, not Mr. Lewis'
18 speculation, not Mr. Consoldane's speculation of
19 what if, if this is possible. We know that
20 Nathaniel Jackson, his only evidence is what the
21 admission is he made in his tape. This stuff has
22 nothing to do with what Nathaniel Jackson said

1 happened.

2 Now, I'm going to make a further motion
3 on my own. I believe that the witnesses this
4 morning were listed by Mr. Lewis and
5 Mr. Consoldane, which deal with the lease dealing
6 with the vehicle or vehicles of the co-defendant in
7 this case, Donna Roberts, the business, the house
8 title, are totally irrelevant under Ohio law.
9 There's nothing in Ohio law that requires as a
10 matter of proof in evidence that a victim be the
11 owner of a vehicle. In fact, the victim under Ohio
12 law, could be an owner that has possession, even if
13 it is unlawful. So this evidence that we're
14 getting this morning is totally irrelevant, and
15 Your Honor, I would only request instead of making
16 a motion after each witness to strike, that we have
17 an opportunity that the Court would wait until
18 Monday, and let both sides brief this issue. It is
19 important to the case because it is obvious that if
20 it isn't relevant, it can be confusing and the
21 purpose of Jury instructions and the purpose of
22 rulings is to make sure that the trial stays on

1 track.

2 MR. CONSOLDANE: Your track.

3 MR. WATKINS: I said I am only
4 suggesting, Your Honor, that we brief this, as to
5 this issue, and then before the Jury, then the
6 Court could decide.

7 MR. CONSOLDANE: First of all, he
8 opened the door. He opened the door when he talked
9 about his character. He can't close it now.

10 MR. WATKINS: I was going to let
11 Chuck say a few words.

12 THE COURT: Go ahead.

13 MR. MORROW: Judge, evidence rule
14 404 talks about character evidence being
15 inadmissible to prove conduct, and indeed it says,
16 "Evidence of a persons's character or trait of his
17 character is not admissible for the purpose of
18 proving that he acted in conformity therewith on a
19 particular occasion, subject, to the following
20 exceptions. Character of the accused." And that
21 is 404-A(1). "Evidence of a pertinent trait of his
22 character offered by an accused, or by the

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1 Prosecution to rebut the same is admissible;
2 however, in prosecutions for rape, gross sexual
3 imposition and prostitution, the exceptions
4 provided by the statute enacted by the General
5 Assembly applicable. (2) Character evidence of the
6 victim. Evidence of a pertinent trait of the
7 character of the victim of the crime offered by an
8 accused, or by the prosecution to rebut the same,
9 or evidence of a character trait of peacefulness of
10 the victim offered by the Prosecution in a homicide
11 case to rebut evidence that the victim was the
12 first aggressor is admissible." In this case,
13 there has not been any evidence presented by the
14 Defense to suggest that the deceased was the first
15 aggressor. We have speculation and allegations by
16 the Defendant that that is the case. Indeed, now
17 that is the Defendant's own self-serving statement
18 that was made, and I think to allow -- to allow
19 allegations in respect to his character for
20 purposes of this badge that he was carrying, for
21 purposes of impeaching his character beyond
22 aggressiveness is irrelevant, and that is what they

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1 want to get into. They are attacking his character
2 as a person, not his character as to whether he was
3 the first aggressor or not, so allow them to get
4 into questions about whether or not he had this
5 badge. Whether or not the Cleveland Federal Office
6 was going to investigate him has nothing to do with
7 his aggressiveness tendencies.

8 MR. WATKINS: And Jim Lewis would
9 have to bring witnesses to go into what position he
10 had in Florida, what position he had here. That is
11 why you have the collateral evidence rule.

12 MR. LEWIS: It is bogus.

13 MR. WATKINS: You have to prove it.

14 MR. MORROW: We're not attacking
15 whether he's truthful or not and that what their
16 attempt is to do to show that this man --

17 THE COURT: I have been through this
18 with the Court of Appeals before and here's where
19 we're at.

20 MR. LEWIS: Let me finish. Now,
21 what Mr. Morrow said is that basically, just
22 because the Defendant's statement says

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1 self-defense, he calls it speculation, all of that,
2 and he doesn't consider that evidence at all. It
3 is evidence. The Jury can consider that. They may
4 well believe that that is the fact in this case.
5 And in regard to the fact that Mr. Watkins says
6 there's not one iota of evidence in here that
7 Mr. Fingerhut was aggressive or did any violence,
8 whatever, that's not true. And the letters from
9 Donna Roberts to Nathaniel Jackson within four or
10 five days of the time that this occurred, there's
11 an indication of the fact that he beat her up so
12 bad, he gave her black eyes, and she called
13 Someplace Safe and she also ran around town with
14 sunglasses on because he beat her up. They
15 introduced it. It is their letters. They
16 introduced it. It is in the record now. So
17 there's evidence of that.

18 Let me make this simple. In regard to
19 the witnesses we have this morning regarding these
20 properties, I'll give the Judge -- I'll give a
21 hypothetical. Let's turn this around. Let's turn
22 this around where Donna Roberts ends up dead.

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1 Mr. Fingerhut is the suspect and it just so happens
2 that Donna Roberts had a boyfriend named Nathaniel
3 Jackson. And the Prosecution goes through and
4 finds out that all of the property was in the name
5 of Donna Roberts. So Donna Roberts, it was all her
6 property to begin with. Then they happen to find a
7 Will that says Donna Roberts decides to give
8 everything to a man by the name of Robert
9 Fingerhut. Now, the State would turn around and
10 say that is introducible, this is evidence of
11 motive for him to kill her. And if it is
12 introducible this way, it is introducible the other
13 way to show that this man had a motive to kill
14 Nathaniel Jackson because he was a threat to
15 whatever this man used and operated, during his
16 lifetime. Even though he didn't own it, he was a
17 threat to him, and that is evidence of motive.
18 We're allowed to bring that in, and I don't care if
19 he calls it speculation, because that is evidence.
20 What we're doing, what he's trying to do is stop us
21 from presenting any defense at all and that is
22 ridiculous.

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1 MR. CONSOLDANE: One other thing is
2 that whatever argument they had about character,
3 went out the door when they put a witness on the
4 stand and asked him what kind of a guy
5 Mr. Fingerhut was. They did that. If they did
6 that, once the door is opened, we're allowed to
7 walk through.

8 MR. WATKINS: The questions about
9 employees' relationship is relevant in the sense of
10 to show that they knew, how well they knew him.
11 They had every opportunity with every employee to
12 deal with the relationship dealing with the
13 employee and the victim in this case. They had
14 ample opportunity. This evidence most importantly,
15 is the question of whether or not and the fact of
16 self-defense, they want to go into crimes dealing
17 with dishonesty or theft and fraud, dealing with
18 the self-defense case. That is not appropriate.
19 It is not what the law --

20 MR. CONSOLDANE: You opened the
21 door.

22 MR. WATKINS: I did not. I'll let

1 the Court rule.

2 THE COURT: Self-defense is an
3 affirmative defense. And self-defense primarily is
4 based on the mental state of the, in this case, the
5 Defendant, at the time that the incident leading to
6 the claim of self-defense arises. The Jury is told
7 through the instruction, you have to look within
8 the mind of the Defendant at the time that this
9 murder occurred, to see if a reasonable man would
10 think that he was justified in defending his own
11 life. Now, the character of the victim is totally
12 irrelevant unless and until something occurs,
13 whereby it is made relevant and that is for the
14 presentation of the affirmative defense of
15 self-defense. At that time, the Defense has a
16 right to go back and to review and to, if need be,
17 call the State's previous witnesses to establish
18 any actions maybe to establish that the victim had
19 a reputation for being aggressive, had made
20 threats. But to bring that all up at this point it
21 is immaterial. It is irrelevant because it only
22 becomes relevant if the affirmative defense of

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1 self-defense is raised. You wish the Prosecution
2 to take it on good faith that you are going to
3 assert -- you have no duty to do anything. So, you
4 get into the situation where you can get all kinds
5 of evidence in here. If it exists, I don't know if
6 it does or not, of the deceased being this total
7 bad guy and a bum. You know, one could infer that
8 he's some kind of a nut, because he carries these
9 bogus identifications around. Or you can just as
10 easily infer, hey this guy collects these kinds of
11 things. People collect all kinds of things. You
12 ascribe a sinister motive to the fact that he had
13 those things, which may or may not be true. It
14 only becomes relevant if self-defense is put up,
15 because the character of the victim himself, has
16 nothing to do with a justification for murder,
17 other than the relationship to the Jury question of
18 whether Nathaniel Jackson acted in self-defense.
19 If he had, within his knowledge, certain
20 propensities, or something had been said or done,
21 including the fact that he had beat up the wife a
22 couple of weeks before, only to lay the groundwork,

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1 as to what the Defendant was thinking at the time
2 he asserted the right of self-defense. That is the
3 only relevancy that the character or history of
4 this victim has to this case.

5 MR. CONSOLDANE: How about the fact
6 that they made it an issue when they asked him what
7 kind of guy was Robert Fingerhut? Now, am I
8 supposed to just ignore that and let them put that
9 in?

10 THE COURT: You didn't object to it.
11 The question was irrelevant to where we're at in
12 the case.

13 MR. CONSOLDANE: I didn't object.

14 MR. WATKINS: Also showed he was a
15 jokester. Had all kinds of stupid stuff.

16 MR. CONSOLDANE: Once they go there
17 then, I am permitted to go there, also.

18 THE COURT: Tony, my point is, I
19 have no problem with whenever I have a close call,
20 I make it a practice to go with the Defendant, you
21 can't go wrong there.

22 (OFF THE RECORD)

1 So, on the other hand, if you find that the State
2 failed to prove beyond a reasonable doubt that the aggravated
3 murder was done purposely or any of the other essential
4 elements of the offense of aggravated murder as charged in
5 Count One of the indictment, and the defendant has failed to
6 prove by a preponderance all of the essential elements of
7 self-defense, then your verdict must be not guilty of that
8 offense; and in that event, you will continue your
9 deliberations to decide whether the State has proven beyond a
10 reasonable doubt all of the essential elements of the lesser
11 included offense of murder.

12 Now, the offense of murder is distinguished from
13 aggravated murder in this count by the absence or failure to
14 prove prior calculation and design.

15 Before you can find the defendant guilty of the
16 lesser included offense of murder you must find beyond a
17 reasonable doubt that on or about the 11th day of December,
18 2001, and in Trumbull County, Ohio, the defendant purposely
19 caused the death of Robert S. Fingerhut.

20 I believe all the relevant terms have been
21 previously defined for you.

22 Now, with respect to this lesser included offense,
23 the defendant claims that at the time of the offense he acted

1 charges that the defendant committed the aggravated murder
2 while committing, attempting to commit, or fleeing
3 immediately after committing aggravated burglary, and that
4 the defendant was either the principal offender in the
5 commission of the aggravated murder or, if not the principal
6 offender, he committed the aggravated murder with prior
7 calculation and design.

8 Aggravated burglary has already been defined for
9 you.

10 Principal offender means one who personally performs
11 every act constituting the offense which, relative to this
12 specification, is aggravated murder.

13 While committing or attempting to commit means that
14 the aggravated burglary must occur as part of acts leading up
15 to or occurring during or immediately after the murder set
16 out in this charge and that the murder was directly
17 associated with the theft offense set out in this charge.
18 The question of whether the defendant killed Robert Fingerhut
19 before or after he committed a theft offense is not of any
20 consequence, that is it could occur leading up to, during, or
21 at the conclusion or immediately after.

22 Prior calculation and design has been previously
23 defined.

1 Before you can find the defendant guilty of
2 Specification One to Count One you must find that the State
3 has proven beyond a reasonable doubt that the defendant
4 committed the aggravated murder while he was committing,
5 attempting to commit, or fleeing immediately after committing
6 aggravated burglary, and that the defendant was either the
7 principal offender in the commission of the aggravated murder
8 or, if not the principal offender, he committed the
9 aggravated murder with prior calculation and design.

10 If you find that the State proved beyond a
11 reasonable doubt all of the essential elements of this
12 specification, then your verdict must be guilty as to that
13 specification. If you find that the State failed to prove
14 beyond a reasonable doubt any one of the essential elements
15 of this specification, your verdict must be not guilty as to
16 that specification.

17 Specification Two to Count One charges that the
18 defendant committed the aggravated murder while committing,
19 attempting to commit, or fleeing immediately after committing
20 aggravated robbery, and that the defendant was either the
21 principal offender in the commission of the aggravated murder
22 or, if not the principal offender, he committed the
23 aggravated murder with prior calculation and design.

1 I have previously defined, I believe, all relevant
2 terms to that.

3 Before you can find the defendant guilty of
4 Specification Two to Count One you must find that the State
5 has proven beyond a reasonable doubt that the defendant
6 committed the aggravated murder while he was committing,
7 attempting to commit, or fleeing immediately after committing
8 aggravated robbery, and that the defendant was either the
9 principal offender in the commission of the aggravated murder
10 or, if not the principal offender, he committed the
11 aggravated murder with prior calculation and design.

12 In Count Two of the indictment the defendant is
13 charged with, Count Two, aggravated murder. Now, with
14 respect to this count, aggravated murder is purposely causing
15 the death of another while committing, attempting to commit,
16 or fleeing immediately after committing aggravated robbery
17 and/or aggravated burglary.

18 Before you can find the defendant guilty of
19 aggravated murder on this count you must find beyond a
20 reasonable doubt that on or about the 11th day of December,
21 2001, and in Trumbull County, Ohio, the defendant purposely
22 caused the death of Robert S. Fingerhut while the defendant
23 was committing, attempting to commit, or fleeing immediately

1 aggravated robbery but you also find that the defendant
2 proved by a greater weight of the evidence that he acted
3 knowingly while under the influence of sudden -- or sudden
4 passion -- influence of sudden passion or in a sudden fit of
5 rage, either of which was brought on by serious provocation
6 occasioned by the victim that was reasonably sufficient to
7 incite the defendant into using deadly force, then you must
8 find the defendant not guilty of murder and guilty of
9 voluntary manslaughter.

10 If you find defendant not guilty of aggravated
11 murder as charged in Count Two, you will not consider any
12 specification relative to Count Two.

13 If you find the defendant guilty of aggravated
14 murder as charged in the indictment, it is your duty to
15 deliberate further, this is aggravated murder on Count Two,
16 you must then decide additional factual questions, which we
17 call specifications, relative to this count. This count sets
18 forth two specifications. You will proceed to consider
19 whether each specification to this count has been proven
20 beyond a reasonable doubt if, and only if, you determine that
21 the defendant is guilty of this count. If your verdict is
22 not guilty as to this count, then you would not consider any
23 of the specification attached. If your verdict is guilty as

1 specification, then your verdict must be guilty as to that
2 specification. If you find that the State failed to prove
3 beyond a reasonable doubt any one of the essential elements
4 of the specification, your verdict must be not guilty as to
5 that specification.

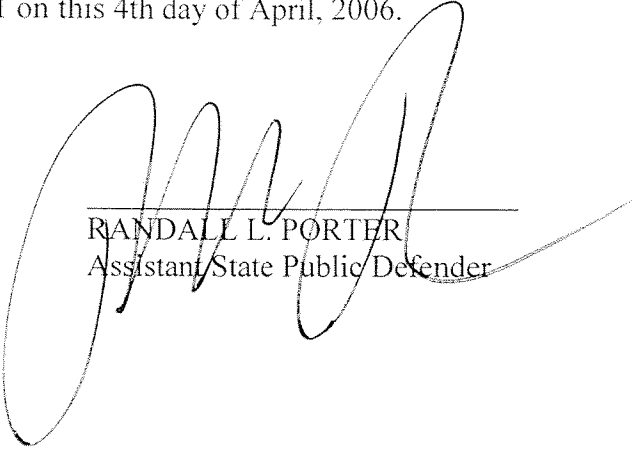
6 Specification Two as contained in Count Two charges
7 that the defendant committed the aggravated murder while
8 committing, attempting to commit, or fleeing immediately
9 after committing aggravated robbery, and that the defendant
10 was either the principal offender in the commission of the
11 aggravated murder or, if not the principal offender, he
12 committed the aggravated murder with prior calculation and
13 design. And again I've defined all those terms for you.

14 Before you can find the defendant guilty of
15 Specification Two attached to Count Two you must find that
16 the State has proven beyond a reasonable doubt that defendant
17 committed the aggravated murder while he was committing,
18 attempting to commit, or fleeing immediately after committing
19 aggravated robbery, and that the defendant was either the
20 principal offender in the commission of the aggravated murder
21 or, if not the principal offender, he committed the
22 aggravated murder with prior calculation and design.

23 The specifications set forth in the indictment each

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Volume I Appendix to Nathaniel E. Jackson's Notice of Application for Reopening was forwarded by regular U.S. Mail to Dennis Watkins, Trumbull Count Prosecuting Attorney and Luwayne Annos Assistant Prosecution Attorney, Trumbull County Prosecutor's Office, 160 High Street, N.W., 4th Floor Administration Building Warren, Ohio 44481 on this 4th day of April, 2006.



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